



STATE LAW LIBRARY  
Justice Building  
215 N. Sanders  
Helena, Montana 59620



STATE LAW LIBRARY  
Justice Building  
215 N. Sanders  
Helena, Montana 59620











# REVISED CODES OF MONTANA

## VOLUME 1

### Part 1

### 1959 Cumulative Pocket Supplement

#### *Containing*

AMENDMENTS TO PROVISIONS AND NEW PROVISIONS  
APPROVED SINCE PUBLICATION OF REPLACEMENT  
VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1  
(PART 1) THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

#### AND

PARALLEL REFERENCE TABLES SUPPLEMENTING  
REPLACEMENT VOLUME 1 (PART 1)

#### *Edited by*

JOHN W. TRANBERG

#### and

THE PUBLISHERS' EDITORIAL STAFF

#### *Editorial Supervisor*

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana



# REVISED CODES OF MONTANA

VOLUME I

Part I

1959 Cumulative Pocket Supplement

COPYRIGHT 1959

by

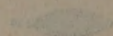
THE ALLEN SMITH COMPANY

JOHN W. THAMBERG

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Indianapolis, Indiana





## CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

For index see pocket supplement to Replacement Volume 9

Board of prison commissioners, Art. VII, sec. 20 note.

City, town, township, school district, or high school district indebtedness, Art. XIII, sec. 6.

State board of education, Art. XI, sec. 11 note.

Term of office, local officials, Art. XVI, sec. 6 note.





# CONSTITUTION OF THE STATE OF MONTANA

---

## ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

### Sec. 1.

#### References

Cited in *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 912.

### Sec. 2.

#### References

Cited in *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 909, 912.

### Sec. 11.

#### Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums

did not violate this section. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 918.

### Sec. 14.

#### Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section.

*State v. Peterson*, — M —, 328 P 2d 617, 620.

#### References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270, 273.

### Sec. 15.

#### Rights-of-Way of Necessity

There are no implied grants or reservations of rights-of-way of necessity in Montana. Property for roads must be con-

demned. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323; *Violet v. Martin*, 62 M 355, 205 P 221.

### Sec. 19.

#### Amount of Bail

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probabil-

ity of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would

live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a

very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

## Sec. 20.

### Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1063.

### References

Cited in *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

## Sec. 23.

### References

Cited or applied in *Application of*

*Banschbach*, 133 M 312, 323 P 2d 1112, 1113.

## Sec. 27.

### Destruction of Property Without a Trial or Hearing

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or hearing in such cases, and such proceedings are due process. *Ruona v. City of Billings*, — M —, 323 P 2d 29, 31.

### Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. *Great Northern Railway Co. v. Roosevelt County*, — M —, 332 P 2d 501, 505.

### Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 918.

### Operation and Effect

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, — M —, 323 P 2d 29.

### Rural Fire Districts Law

Rural fire districts law, sections 11-2008, 11-2009, before 1957 amendment, was unconstitutional as being in direct conflict with this section. *Great Northern Railway Co. v. Roosevelt County*, — M —, 332 P 2d 501, 502, 505, 506.

### Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, — M —, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. *Ruona v. City of Billings*, — M —, 323 P 2d 29, 31.

### Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1064.

## Sec. 29.

### References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 279; *Morgan v. Murray*, — M

—, 328 P 2d 644, 653; *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 912.

ARTICLE IV—DISTRIBUTION OF POWERS

Sec. 1.

References

Cited or applied in *Ruona v. City of Billings*, — M —, 323 P 2d 29, 32 (dis-

senting opinion); *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 912.

ARTICLE V—LEGISLATIVE DEPARTMENT

Sec. 1.

References

Cited or applied in *Ruona v. City of Billings*, — M —, 323 P 2d 29, 32 (dissent-

ing opinion); *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 912.

Sec. 20.

References

Cited in *Morgan v. Murray*, — M —, 328 P 2d 644, 654.

Sec. 23.

Effect of Subsequent Codification on Defect

Section 91-4321 as it is now written was enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by

the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. *State v. Rice*, — M —, 329 P 2d 451, 453.

Sec. 26.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 232.

Operation and Effect in General

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. *State ex rel. James v. Aronson*, 132 M 120, 314 P 2d 849, overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

Sec. 32.

Construction

This section refers to the raising of money for defraying the expenses of the general government. *Morgan v. Murray*, — M —, 328 P 2d 644, 648.

for local purposes are not bills for "raising revenue" within the meaning of this section. *Morgan v. Murray*, — M —, 328 P 2d 644, 649.

Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. *Morgan v. Murray*, — M —, 328 P 2d 644, 654.

License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. *Morgan v. Murray*, — M —, 328 P 2d 644, 648.

Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes

Sec. 34.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 920.



ARTICLE VII—EXECUTIVE DEPARTMENT

**Sec. 1.**

**References**

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 401 (dissenting opinion).

**Sec. 15.**

**References**

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 401 (dissenting opinion).

**Sec. 20.**

**Proposed Amendment**

Chapter 194, Laws of 1959 proposed an amendment to this section of the Constitution of Montana. This proposed amendment is to be submitted to the voters at the general election in November, 1960. The amendment reads as follows: "Section 20. The governor, secretary of state and attorney general shall constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law; and no claim against the state, except for salaries and compensa-

tion of officers fixed by law, shall be passed upon by the legislative assembly without first having been considered and acted upon by said board. The legislative assembly may provide for the temporary suspension of the state treasurer by the governor, when the board of examiners deems such action necessary for the protection of moneys of the state." Laws 1959, Ch. 194, Sec. 2.

**References**

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

ARTICLE VIII—JUDICIAL DEPARTMENTS

**Sec. 3.**

**Exclusive Power**

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 913.

**Scope of Power to Issue Writs in General**

Even if a stay, in a case where a writ of

mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme court has power under this section to issue a supersedeas, or other appropriate writ, to effectuate its appellate jurisdiction, thus to insure the aggrieved board an appeal that otherwise might be of no value. *Gill v. Rafn*, 133 M 505, 326 P 2d 974.

**Sec. 11.**

**Divorce Proceedings**

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 232.

**References**

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092; *Deich v. Deich*, — M —, 323 P 2d 35, 38.

**Sec. 12.**

**References**

Cited or applied in *Deich v. Deich*, — M —, 323 P 2d 35, 38.

**Sec. 14.**

**References**

Cited or applied in *Deich v. Deich*, — M —, 323 P 2d 35, 38.

**Sec. 15.**

**References**

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974.

ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS  
TO HOLD OFFICE

**Sec. 2.**

**Operation and Effect**

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualification to only those debts or liabilities which look to ad valorem taxes for their retirement. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 915.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 916.

ARTICLE XI—EDUCATION

**Sec. 11.**

**Proposed Amendment**

Chapter 191, Laws of 1959 proposed an amendment to this section of the Constitution of Montana. This proposed amendment is to be submitted to the voters at the general election in November, 1960. The amendment reads as follows: "Section 11. The general control and supervision of the public, free, common schools shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eight (8) members,

appointed by the governor; subject to the confirmation of the Senate, under the regulations and restrictions to be provided by law. The general control and supervision of the University of Montana shall be vested in a board of regents, whose powers and duties shall be prescribed by law. The said board shall consist of eight (8) members, appointed by the governor, subject to confirmation of the Senate, under the regulations and restrictions to be provided by law." Laws 1959, Ch. 191, Sec. 2.

ARTICLE XII—REVENUE AND TAXATION

**Sec. 1a.**

**Income Tax**

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this

section. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 228.

**Sec. 12.**

**Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 920.

**Sec. 15.**

**Intervention of Court**

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, — M —, 328 P 2d 634, 635.

ties and between individual taxpayers. *State ex rel. Reid v. District Court*, — M —, 328 P 2d 634, 635.

**Powers of State Board of Equalization**

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several coun-

**Writ of Prohibition**

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the as-

essed values of farm lands in county, which prevented board from discharging its constitutional duties. *State ex rel. Reid v. District Court*, — M —, 328 P 2d 634, 635.

#### References

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 182.

### ARTICLE XIII—PUBLIC INDEBTEDNESS

#### Sec. 2.

##### "Debt or Liability"

Section 2, article IX of the Montana Constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 916.

##### Laws Not Violating This Provision

Statute amending initiative act provid-

ing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under this section. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 915, 916.

#### References

Cited in *Morgan v. Murray*, — M —, 328 P 2d 644, 649.

Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

##### Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7, 1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation, December 8, 1958. This amendment in-

serted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

### ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

#### Sec. 9.

##### Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of

the community. *Ruona v. City of Billings*, — M —, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. *Ruona v. City of Billings*, — M —, 323 P 2d 29, 31.



**Sec. 20.****References**

Cited in Professional &amp; Business Men's

Life Ins. Co. v. Bankers Life Co., 163 F  
Supp 274, 279.**ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES****Sec. 6.****Proposed Amendment**

Chapter 193, Laws 1959 proposed an amendment to this section of the Constitution of Montana. This proposed amendment is to be submitted to the voters at the general election in November, 1960. The amendment reads as follows: "Section 6. The legislative assembly may pro-

vide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their terms of office shall be as prescribed by law, not in any case to exceed four (4) years, except as in this constitution otherwise provided." Laws 1959, Ch. 193, Sec. 2.



# TABLE OF CORRESPONDING CODE SECTIONS

## Revised Codes 1921 and 1935 to Revised Codes 1947

This table shows the disposition made of the sections of the Revised Codes of 1921 and the Revised Codes of 1935 since publication of Replacement Volume 1.

1921 & 1935		1947	1921 & 1935		1947
295-298	Rep. Ch. 158, Sec. 11, L. 1959		5148.1	Unconstitutional, — M —,	
303	Rep. Ch. 158, Sec. 11, L. 1959			332 P 2d 501	
437, 438	Rep. Ch. 202, Sec. 3, L. 1959		6155	Rep. Ch. 43, Sec. 4, L. 1959	
440	Rep. Ch. 202, Sec. 3, L. 1959		6721	Rep. Ch. 213, Sec. 3, L. 1959	
812.14	Rep. Ch. 20, Sec. 3, L. 1959		6734	Rep. Ch. 213, Sec. 3, L. 1959	
1520	Rep. Ch. 189, Sec. 2, L. 1959		6736-6739	Rep. Ch. 213, Sec. 3, L. 1959	
1576-1579	Rep. Ch. 190, Sec. 1, L. 1959		10622	Rep. Ch. 154, Sec. 1, L. 1959	
1760.1-1760.6	Rep. Ch. 101, Sec. 1, L. 1959		10925	94-3920	
2921	Rep. Ch. 197, Sec. 1, L. 1959		11567	Rep. Ch. 52, Sec. 1, L. 1959	
3509	Rep. Ch. 188, Sec. 4, L. 1959		12447.1-12447.10	Rep. Ch. 15, Sec. 1, L. 1959	
3525	Rep. Ch. 188, Sec. 4, L. 1959		12450	Rep. Ch. 15, Sec. 1, L. 1959	



# TABLE OF CORRESPONDING CODE SECTIONS

## Revised Codes 1907 to Revised Codes 1947

This table shows the disposition made of the sections of the Revised Codes of 1907 since publication of Replacement Volume 1.

1907	1947	1907	1947
1306	Rep. Ch. 190, Sec. 1, L. 1959	4494-4497	Rep. Ch. 213, Sec. 3, L. 1959
1308-1310	Rep. Ch. 190, Sec. 1, L. 1959	7978	Rep. Ch. 154, Sec. 1, L. 1959
4069	Rep. Ch. 43, Sec. 4, L. 1959	8881	Rep. Ch. 52, Sec. 1, L. 1959
4479	Rep. Ch. 213, Sec. 3, L. 1959	9732	Rep. Ch. 15, Sec. 1, L. 1959
4492	Rep. Ch. 213, Sec. 3, L. 1959		

# TABLE OF SESSION LAWS

This table shows the disposition of the Sections and Chapters of the Session Laws made by legislative enactments since publication of Replacement Volume 1.

1909			1927		
Ch.	Sec.	Herein	Ch.	Sec.	Herein
8	1	Rep. Ch. 190, Sec. 1, L. 1959	4	1	Rep. Ch. 189, Sec. 2, L. 1959
1911			151	1-3	Rep. Ch. 202, Sec. 3, L. 1959
Ch.	Sec.	Herein	152	1-4	Rep. Ch. 15, Sec. 1, L. 1959
120	67	Rep. Ch. 188, Sec. 4, L. 1959	1929		
	83	Rep. Ch. 188, Sec. 4, L. 1959	Ch.	Sec.	Herein
125	10	Rep. Ch. 189, Sec. 2, L. 1959	83	1	Rep. Ch. 202, Sec. 3, L. 1959
1915			121	1-6	Rep. Ch. 101, Sec. 1, L. 1959
Ch.	Sec.	Herein	173	1-5	Rep. Ch. 15, Sec. 1, L. 1959
40	1	Rep. Ch. 202, Sec. 3, L. 1959	177	4	Rep. Ch. 197, Sec. 1, L. 1959
96	16	Rep. Ch. 197, Sec. 1, L. 1959	1931		
1919			Ch.	Sec.	Herein
Ch.	Sec.	Herein	196	1	Rep. Ch. 15, Sec. 1, L. 1959
107	1-2	Rep. Ch. 202, Sec. 3, L. 1959	1933		
154	1	Rep. Ch. 202, Sec. 3, L. 1959	Ch.	Sec.	Herein
205	2-5	Rep. Ch. 158, Sec. 11, L. 1959	126	1-6	Rep. Ch. 101, Sec. 1, L. 1959
	10	Rep. Ch. 158, Sec. 11, L. 1959	167	1-3	Rep. Ch. 158, Sec. 11, L. 1959
1919 Ex. Sess.			1935		
Ch.	Sec.	Herein	Ch.	Sec.	Herein
26	1	Rep. Ch. 189, Sec. 2, L. 1959	57	2	Rep. Ch. 202, Sec. 3, L. 1959
1921			94	1	Rep. Ch. 15, Sec. 1, L. 1959
Ch.	Sec.	Herein	182	14	Rep. Ch. 20, Sec. 3, L. 1959
133	1	Rep. Ch. 190, Sec. 1, L. 1959	1937		
163	1	Rep. Ch. 158, Sec. 11, L. 1959	Ch.	Sec.	Herein
1925			46	2	Rep. Ch. 158, Sec. 11, L. 1959
Ch.	Sec.	Herein	86	1-11	Rep. Ch. 72, Sec. 1, L. 1959
148	1	Unconstitutional, — M —, 332 P 2d 501	204	1-7	Rep. Ch. 81, Sec. 1, L. 1959

# TABLE OF SESSION LAWS

1939			Ch.	Sec.	Herein
Ch.	Sec.	Herein	206	12	Rep. Ch. 230, Sec. 1, L. 1959
103	1-3	Rep. Ch. 163, Sec. 1, L. 1959	1951		
204	12	Rep. Ch. 192, Sec. 14, L. 1959	Ch.	Sec.	Herein
	19	Rep. Ch. 192, Sec. 14, L. 1959	194	7-10	Rep. Ch. 158, Sec. 11, L. 1959
1943			1953		
Ch.	Sec.	Herein	Ch.	Sec.	Herein
199	11	Rep. Ch. 102, Sec. 1, L. 1959	142	1	Rep. Ch. 189, Sec. 2, L. 1959
1945			1955		
Ch.	Sec.	Herein	Ch.	Sec.	Herein
38	14	Rep. Ch. 188, Sec. 4, L. 1959	139	1-3	Rep. Ch. 285, Sec. 20, L. 1959
148	1-8	Rep. Ch. 55, Sec. 1, L. 1959	155	1	Rep. Ch. 158, Sec. 11, L. 1959
213	1-6	Unconstitutional, 130 M 402, 303 P 2d 938	179	1	Rep. Ch. 163, Sec. 1, L. 1959
1947			237	1	Rep. Ch. 202, Sec. 3, L. 1959
Ch.	Sec.	Herein	1957		
118	1	Rep. Ch. 272, Sec. 2, L. 1959	Ch.	Sec.	Herein
217	1	Rep. Ch. 218, Sec. 4, L. 1957	15	1	Rep. Ch. 285, Sec. 20, L. 1959
220	14	Rep. Ch. 149, Sec. 4, L. 1959	59	1-3	Temporary
235	8	Rep. Ch. 197, Sec. 1, L. 1959	161	1	Temporary
1949				2	Const., Art. XIII, Sec. 6
Ch.	Sec.	Herein		3-4	Temporary
20	1	Rep. Ch. 272, Sec. 2, L. 1959	197	1-7	Unconstitutional, — M —, 328 P 2d 644
113	1	Rep. Ch. 154, Sec. 1, L. 1959	218	1	84-3804
142	7	Rep. Ch. 187, Sec. 2, L. 1959		2-3	Temporary
182	1	Rep. Ch. 202, Sec. 3, L. 1959		4	Effective Date and Repealing Clause
185	20	Rep. Ch. 188, Sec. 4, L. 1959	246	9	Rep. Ch. 271, Sec. 8, L. 1959
206	7-10	Rep. Ch. 230, Sec. 1, L. 1959		41	Rep. Ch. 271, Sec. 8, L. 1959
				49	Rep. Ch. 271, Sec. 8, L. 1959
				50	Rep. Ch. 271, Sec. 8, L. 1959

## 1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
1	1-3	Temporary	5	1	76-102
2	1	12-337		2	76-108
	2	12-338		3	Repealing Clause
	3	Effective Date	6	1	54-125
3	1	16-1638	7	1	75-5201
	2	Repealing Clause		2	75-5202
4	1	76-107		3	75-5203
	2	Repealing Clause		4	75-5204



# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
7	5	75-5205	29	1	11-1814
	6	75-5206		2	Repealing Clause
	7	75-5207	30	1	75-710.1
	8	75-5208		2	75-710.2
	9	Effective Date		3	75-710.3
	10	Repealing Clause		4	75-710.4
8	1	11-1823		5	Repealing Clause
	2	Repealing Clause	31	1	26-222
9	1	25-231		2	Repealing Clause
	2	Repealing Clause		3	Effective Date
10	1	81-908	32	1	23-1213
	2	Effective Date		2	Repealing Clause
11	1	16-1030		3	Effective Date
	2	Repealing Clause	33	1	3-1709
12	1	26-907		2	Appropriation
	2	Repealing Clause		3	Repealing Clause
13	1-4	86-5606 note	34	1	26-201
14	1	80-720		2	Repealing Clause
	2	Repealing Clause	35	1	26-510
15	1	Repealing Clause		2	26-511
16	1	79-2001		3	26-512
	2	79-2002		4	Repealing Clause
	3	79-2003	36	1	26-104
	4	Repealing Clause		2	26-202.1
	5	Effective Date		3	Repealing Clause
17	1	35-414	37	1	38-801
	2	Repealing Clause		2	Repealing Clause
	3	Effective Date	38	1	11-966
18	1	23-503		2	Repealing Clause
	2	23-511	39	1	75-2901
	3	23-1302(1)		2	Repealing Clause
	4	23-1303	40	1	32-21-132
	5	23-1306		2	Repealing Clause
	6	23-1401	41	1	76-117
	7	23-1402		2	Repealing Clause
	8	23-1403	42	1	40-1302
	9	23-1404		2	Repealing and Sav-
	10	23-1405			ings Clause
19	1	10-101.1		3	Effective Date
	2	Repealing Clause	43	1	40-1334
20	1	23-1608		2	40-1335
	2	23-1608A		3	40-1336
	3	Repealing Clause		4	Repealing Clause
	4	Effective Date		5	Effective Date
21	1	48-134	44	1	26-332
	2	Repealing Clause		2	Repealing Clause
22	1	10-617		3	Effective Date
	2	Repealing Clause	45	1	16-4528
23	1-7	Temporary		2	Repealing Clause
24	1	75-2301	46	1-5	71-106 note
	2	Repealing Clause	47	1	71-509
25	1	5-506		2	Effective Date
	2	Repealing Clause		3	Repealing Clause
26	1	70-401	48	1	11-2008
	2	70-402		2	Severability Clause
	3	70-403		3	Repealing Clause
	4	70-404	49	1-3	84-5606 note
	5	70-405	50	1	23-1808
	6	70-406	51	1	31-125
	7	70-407		2	Repealing Clause
	8	Effective Date	52	1	Repealing Clause
27	1-3	26-202.1 note		2	Effective Date
28	1	11-1806			
	2	Repealing Clause			

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
53	1	32-1518	69	4	3-1513
	2	Repealing Clause		5	3-1514
54	1	69-1512		6	3-1515
	2	69-1516	70	1	75-4230
	3	Repealing Clause		2	Repealing Clause
	4	Effective Date	71	1	80-706
55	1	Repealing Clause		2	Repealing Clause
56	1	94-201-6	72	1	Repealing Clause
	2	Repealing Clause		2	82-2112
57	1	94-4106		3	82-2113
58	1	80-705		4	Repealing Clause
	2	Repealing Clause	73	1	38-809
	3	Effective Date		2	38-809.1
59	1	90-140		3	38-812
	2	Repealing Clause		4	Effective Date
60	1	94-6029		5	Repealing Clause
	2	94-6030	74	1	75-2006
	3	94-6031		2	Repealing Clause
	4	94-6032	75	1	93-8007
	5	94-6033	76	1	66-1508
	6	Repealing Clause	77	1	11-2008
61	1	94-6913		2	11-2010
	2	Repealing Clause		3	Repealing Clause
62	1	53-106.2	78	1	90-129
	2	53-106.3		2	Repealing Clause
	3	53-106.4	79	1	75-3938
	4	53-106.6		2	Effective Date
	5	Repealing Clause	80	1	94-35-271.1
	6	Effective Date		2	94-35-271.2
63	1	72-150		3	94-35-271.3
	2	Repealing Clause		4	Repealing Clause
64	1	23-304	81	1	Repealing Clause
	2	23-515		2	Effective Date
	3	23-519	82	1	3-2011
	4	23-527		2	Repealing Clause
	5	23-704	83	1	53-422
	6	23-908		2	53-423
	7	23-1210		3	Repealing Clause
	8	23-1219	84	1	31-155
	9	23-1311		2	Repealing Clause
	10	23-1313	85	1	59-704
	11	23-1320		2	Repealing Clause
	12	23-1702	86	1	93-1401
	13	23-1703		2	Repealing Clause
	14	23-1709	87	1	23-1813
	15	23-1714		2	Repealing Clause
	16	23-1715	88	1	93-1509
	17	11-2310		2	Repealing Clause
	18	16-2026	89	1	84-710
	19	75-3912		2	Repealing Clause
	20	Repealing Clause	90	1	28-105
65	1	46-609	91	1	28-109
	2	Repealing Clause	92	1	28-110
66	1	25-605	93	1	28-103
	2	Repealing Clause	94	1	28-104
67	1	46-504	95	1	28-111
	2	Repealing Clause	96	1	26-104
	3	Effective Date		2	Repealing Clause
68	1	75-1303	97	1	59-1103
	2	Repealing Clause		2	59-1104
69	1	3-1510		3	59-1108
	2	2-1511		4	Separability Clause
	3	3-1512			

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
97	5	Repealing Clause	126	1	84-4711
	6	Effective Date		2	Effective Date
98	1	32-1603	127	1	75-3912
	2	Repealing Clause		2	Effective Date
99	1	75-1630	128	1	32-302
	2	Repealing Clause		2	Repealing Clause
100	1	53-108	129	1	66-1806
	2	Repealing Clause		2	Repealing Clause
101	1	Repealing Clause	130	1	94-1805
102	1	Repealing Clause	131	1	38-214
103	1	53-617		2	Repealing Clause
	2	Repealing Clause		3	Effective Date
104	1	71-1207	132	1	16-910
	2	Repealing Clause		2	Repealing Clause
	3	Effective Date	133	1	84-1817
105	1	71-410		2	Repealing Clause
	2	Repealing Clause	134	1	32-2009.1
106	1	26-202.3		2	Repealing Clause
	2	Repealing Clause	135	1	4-317
107	1	11-1912		2	4-324
	2	Repealing Clause		3	Repealing Clause
108	1	75-5003		4	Effective Date
	2	Repealing Clause	136	1	86-705
109	1	31-105		2	86-706
	2	Repealing Clause		3	Repealing Clause
110	1	4-349	137	1	82-1008
	2	Repealing Clause		2	Repealing Clause
111	1	11-2402	138	1	5-905
	2	Repealing Clause		2	Repealing Clause
112	1	46-1005	139	1	5-906
	2	Repealing Clause		2	Repealing Clause
	3	Effective Date	140	1	66-817
113	1	32-21-147		2	66-815
	2	Repealing Clause		3	Repealing Clause
114	1	5-909	141	1	5-908
	2	Repealing Clause		2	Repealing Clause
115	1	14-106	142	1	14-102
	2	Repealing Clause		2	Repealing Clause
116	1	16-2903	143	1	93-6301.1
117	1	16-2428		2	93-6301.2
	2	16-2429		3	Effective Date
	3	16-2430	144	1	93-315
	4	16-2431		2	93-316
	5	Repealing Clause		3	Repealing Clause
118	1	11-2010	145	1	3-228
	2	Repealing Clause		2	Repealing Clause
119	1	26-103	146	1	75-1633
	2	Repealing Clause		2	Repealing Clause
120	1	32-2150.1	147	1	75-4609
	2	32-2150.2		2	Repealing Clause
	3	32-2150.3		3	Effective Date
	4	32-2150.4	148	1	82-1309
121	1	75-1522		2	82-1310
	2	Repealing Clause		3	Repealing Clause
122	1	84-1501.1		4	Effective Date
	2	84-1501.2	149	1	69-2802
	3	Repealing Clause		2	69-2803
123	1	26-703		3	69-2804
	2	Repealing Clause		4	Repealing Clause
124	1	75-1716	150	1	16-1008A
	2	Repealing Clause	151	1	69-1328
125	1	94-1823		2	Repealing Clause
	2	Repealing Clause		3	Effective Date



# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
152	1	71-509	155	60	92-1360
	2	Repealing Clause		61	92-1361
153	1	71-607		62	92-1362
	2	Repealing Clause		63	92-1363
154	1	Repealing Clause		64	92-1364
155	1	92-1301		65	92-1365
	2	92-1302		66	92-1366
	3	92-1303		67	92-1367
	4	92-1304		68	92-1368
	5	92-1305		69	Repealing Clause
	6	92-1306		70	Effective Date
	7	92-1307	156	1	79-2101
	8	92-1308		2	79-2102
	9	92-1309		3	Repealing Clause
	10	92-1310		4	Effective Date
	11	92-1311	157	1	43-801
	12	92-1312		2	43-802
	13	92-1313		3	43-803
	14	92-1314		4	43-804
	15	92-1315		5	43-805
	16	92-1316		6	43-806
	17	92-1317		7	43-807
	18	92-1318		8	43-808
	19	92-1319		9	Separability Clause
	20	92-1320	158	1	79-1012
	21	92-1321		2	79-1013
	22	92-1322		3	79-1014
	23	92-1323		4	79-1015
	24	92-1324		5	79-1016
	25	92-1325		6	79-1017
	26	92-1326		7	79-1018
	27	92-1327		8	82-109
	28	92-1328		9	82-110
	29	92-1329		10	82-112
	30	92-1330		11	Repealing Clause
	31	92-1331	159	1	5-907
	32	92-1332		2	Repealing Clause
	33	92-1333	160	1	41-1801
	34	92-1334		2	41-1802
	35	92-1335		3	41-1803
	36	92-1336		4	41-1804
	37	92-1337		5	41-1805
	38	92-1338		6	Repealing Clause
	39	92-1339	161	1	93-302
	40	92-1340		2	Repealing Clause
	41	92-1341	162	1	4-303
	42	92-1342		2	4-414
	43	92-1343		3	Repealing Clause
	44	92-1344		4	Effective Date
	45	92-1345	163	1	Repealing Clause
	46	92-1346		2	Effective Date
	47	92-1347	164	1	11-2030
	48	92-1348		2	Repealing Clause
	49	92-1349		3	Effective Date
	50	92-1350	165	1	84-2006
	51	92-1351		2	84-2007
	52	92-1352		3	Repealing Clause
	53	92-1353	166	1	3-2004
	54	92-1354		2	3-2004 note
	55	92-1355		3	Repealing Clause
	56	92-1356	167	1	75-4601
	57	92-1357	168	1	75-1632
	58	92-1358		2	Repealing Clause
	59	92-1359			

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
169	1	28-101	186	1	5-904
	2	Repealing Clause		2	Repealing Clause
170	1	92-827	187	1	75-2516
171	1	11-2710		2	Repealing Clause
	2	Repealing Clause		3	75-2518
172	1	84-2202		4	75-2520
	2	Effective Date		5	75-2522
	3	Repealing Clause		6	Repealing Clause
173	1	79-1202	188	1	50-474
	2	Repealing Clause		2	50-501
	3	Effective Date		3	50-475
174	1	69-3401		4	Repealing Clause
	2	69-3402		5	Severability Clause
	3	69-3403	189	1	80-210.1
	4	69-3404		2	Repealing Clause
	5	69-3405		3	Effective Date
	6	69-3406	190	1	Repealing Clause
	7	69-3407	191	1-4	Proposed Const. Amend., Art. XI, Sec. 11
	8	69-3408			
	9	69-3409	192	1	27-403
	10	Separability Clause		2	27-404
	11	Repealing Clause		3	27-405
175	1	84-1802.1		4	27-406
	2	Repealing Clause		5	27-407
176	1	84-2004		6	27-409
	2	Repealing Clause		7	27-410
	3	Effective Date		8	27-414
177	1	87-148		9	27-416
	2	Repealing Clause		10	27-426
	3	Effective Date		11	27-427
178	1	87-148		12	27-428
	2	Repealing Clause		13	27-429
	3	Effective Date		14	Repealing Clause
179	1	89-1209		15	Separability Clause
	2	89-1210		16	Repealing Clause
	3	89-1211		17	Effective Date
	4	89-1212	193	1-4	Proposed Const. Amend., Art. XVI, Sec. 6
	5	89-1213			
	6	89-1214	194	1-4	Proposed Const. Amend., Art. VII, Sec. 20
	7	89-1215			
	8	89-1216	195	1	11-3901
	9	89-1217		2	11-3902
	10	89-1218		3	11-3903
	11	89-1219		4	11-3904
	12	89-1220		5	11-3905
	13	Effective Date		6	11-3906
180	1	5-910		7	11-3907
	2	Repealing Clause		8	11-3908
181	1	84-5408		9	11-3909
	2	Repealing Clause		10	11-3910
	3	Effective Date		11	11-3911
182	1	82-1231		12	11-3912
	2	Repealing Clause		13	11-3913
	3	Effective Date		14	11-3914
183	1	11-1919		15	11-3915
	2	Repealing Clause		16	11-3916
	3	Effective Date		17	11-3917
184	1	11-1918		18	11-3918
	2	Repealing Clause		19	11-3919
	3	Effective Date		20	11-3920
185	1	91-321			
	2	Repealing Clause			

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
196	1	78-1001	210	1	32-1616
	2	78-1002		2	Repealing Clause
	3	78-1003	211	1	53-615.1
	4	78-1004		2	Repealing Clause
	5	78-1005	212	1	16-1015
	6	78-1006		2	Repealing Clause
	7	78-1007	213	1	67-406
	8	78-1008		2	67-407
	9	78-1009		3	Repealing Clause
	10	78-1010	214	1	67-423
	11	Separability Clause		2	67-424
	12	Effective Date		3	Repealing Clause
197	1	Repealing Clause	215	1	32-21-163
198	1	93-303		2	32-21-164
	2	Repealing Clause		3	32-21-165
199	1	11-1804.1		4	Effective Date
	2	Repealing Clause		5	Repealing Clause
	3	Effective Date	216	1	23-1302(2)
200	1	4-172		2	23-1303
	2	4-173		3	23-1307
	3	Repealing Clause		4	Repealing Clause
	4	Effective Date	217	1	16-1629
201	1	32-21-161		2	Repealing Clause
	2	32-21-162		3	Effective Date
	3	Repealing Clause	218	1	41-801
202	1	25-501		2	41-805
	2	25-501.1		3	41-806
	3-4	Repealing Clauses		4	Repealing Clause
203	1	92-1005		5	Effective Date
	2	Repealing Clause	219	1	23-929
204	1	32-2145	220	1	11-1202
205	1	4-333		2	Repealing Clause
	2	Repealing Clause	221	1	32-1123
	3	Effective Date		2	Repealing Clause
206	1	4-403	222	1-4	Appropriation
	2	Repealing Clause	223	1	43-901
	3	Effective Date		2	43-902
207	1	28-404		3	43-903
	2	28-405		4	43-904
	3	28-406		5	Repealing Clause
	4	28-407	224	1	32-2134
	5	28-408		2	Repealing Clause
	6	28-409	225	1	66-229
	7	28-410		2	Repealing Clause
	8	28-411	226	1	53-623
	9	28-412		2	Repealing Clause
208	1	84-4903.1	227	1	69-1807
	2	84-4903.2		2	Repealing Clause
	3	84-4903.3	228	1	16-3605
	4	84-4903.4		2	Repealing Clause
	5	84-4903.5	229	1	62-102
	6	84-4903.6		2	Repealing Clause
	7	84-4903.7	230	1	Repealing Clause
	8	84-4903.8		2	38-1106
	9	84-4903.9		3	38-1108
	10	84-4903.10		4	Repealing Clause
	11	84-4903.11		5	Effective Date
	12	84-4903.12	231	1	92-104
	13	84-4903.13		2	92-108
	14	Separability Clause		3	Repealing Clause
209	1	46-1501	232	1	91-4407
	2	Repealing Clause		2	Repealing Clause
				3	Effective Date

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
233	1	32-21-122	250	1-11	Referendum Measure, 80-701 note
	2	Repealing Clause			
234	1	60-144	251	1	66-2412
	2	Repealing Clause		2	66-2413
235	1	75-2701		3	66-2414
	2	Repealing Clause		4	66-2415
236	1	94-8019		5	66-2416
	2	94-8020		6	66-2417
	3	94-8021		7	66-2418
	4	94-8022		8	66-2419
	5	94-8023		9	66-2420
	6	Separability Clause		10	66-2421
	7	Repealing Clause		11	66-2422
	8	Effective Date		12	66-2423
237	1	32-1014		13	66-2424
	2	Repealing Clause		14	66-2425
238	1	11-403		15	66-2426
	2	Repealing Clause		16	66-2403
	3	Effective Date		17	Repealing Clause
239	1	75-2709	252	1	66-1301
	2	Repealing Clause		2	66-1302
240	1	32-2131		3	66-1305
	2	Repealing Clause		4	66-1307
	3	Effective Date		5	66-1311
241	1	32-2133		6	66-1316
242	1	80-707.1		7	66-1317
	2	80-707.2		8	Separability Clause
	3	80-707.3		9	Repealing Clause
	4	80-707.4	253	1	84-4901
	5	80-707.5		2	84-4903
	6	Repealing Clause		3	84-4910
	7	Effective Date		4	84-4911
243	1	69-2401		5	84-4914
	2	Repealing Clause		6	84-4915
244	1	68-802		7	84-4937
	2	Repealing Clause		8	Separability Clause
245	1	53-106		9	Repealing Clause
	2	Repealing Clause		10	Effective Date
246	1	68-102	254	1	83-701
	2	68-203		2	83-702
	3	68-701		3	83-703
	4	68-801		4	83-704
	5	68-901		5	83-705
	6	Separability Clause		6	83-706
	7	Repealing Clause		7	83-707
	8	Effective Date		8	Effective Date
247	1	32-103		9	Repealing Clause
	2	32-2114	255	1	93-221
	3	84-1831		2	93-222
	4	32-2124.1		3	93-223
	5	32-2124.2		4	93-224
	6	Repealing Clause		5	93-225
248	1	71-1004		6	93-226
	2	Repealing Clause		7	93-227
249	1	94-7835		8	93-228
	2	94-7836		9	93-229
	3	94-7837		10	93-230
	4	94-7838		11	93-231
	5	94-7839		12	93-232
	6	94-7840		13	93-233
	7	94-7841		14	Separability Clause
	8	Savings Clause		15	Repealing Clause
	9	Repealing Clause		16	Effective Date
	10	Effective Date			



# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
256	1	32-1201	264	3	Effective Date
	2	32-1202		4	Repealing Clause
	3	32-1206	265	1	84-4902
	4	32-1207		2	Repealing Clause
	5	32-1208		3	Effective Date
	6	32-1209	266	1	75-107
	7	32-1210		2	Repealing Clause
	8	32-1211	267	1	75-3612
	9	32-1213		2	Repealing Clause
	10	Repealing Clause		3	Effective Date
257	1	84-5403	268	1	94-1002
	2	84-5409		2	Repealing Clause
	3	Effective Date		3	Effective Date
	4	Repealing Clause	269	1	75-104
	5	Effective Date		2	Effective Date
258	1	16-4508	270	1	75-2707
	2	16-4520		2	75-2712
	3	16-4527		3	Repealing Clause
	4	Repealing Clause		4	Separability Clause
	5	Separability Clause	271	1	11-3804
	6	Effective Date		2	11-3812
259	1	69-304		3	11-3830
	2	69-305		4	11-3842
	3	69-306		5	11-3852
	4	69-307		6	11-3853
	5	69-308		7	11-3854
	6	69-309		8	Repealing Clause
	7	69-310	272	1	77-117
	8	69-311		2-3	Repealing Clauses
	9	69-312	273	1	69-2701
	10	69-313		2	69-2702
	11	69-314		3	69-2704
	12	69-315		4	69-2706
	13	69-316		5	Repealing Clause
	14	69-317		6	Effective Date
	15	69-318	274	1	23-902
	16	69-319		2	23-909
	17	Effective Date		3	23-1006
260	1	59-1301		4	Repealing Clause
	2	59-1302	275	1	48-130
	3	59-1303		2	48-130.1
	4	59-1304		3	48-130.2
	5	11-2231		4	Repealing Clause
	6	11-2316		5	Effective Date
	7	16-1620	276	1	48-131
	8	16-2033		2	48-132
	9	75-3919		3	Repealing Clause
	10	75-3942		4	Effective Date
	11	79-1802	277	1	67-1901
	12	89-1705		2	67-1902
	13	89-2501		3	67-1903
	14	59-1305		4	67-1904
	15	59-1306		5	67-1905
	16	Separability Clause		6	67-1906
	17	Effective Date		7	67-1907
261	1	11-2204		8	67-1908
	2	Repealing Clause		9	67-1909
262	1-9	46-201 note		10	67-1910
263	1	84-1502		11	67-1911
	2	Separability Clause		12	67-1912
	3	Repealing Clause		13	67-1913
	4	Effective Date		14	67-1914
264	1	84-1501		15	67-1915
	2	Separability Clause			

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
277	16	Repealing Clause	283	22	47-222
	17	67-1916		23	47-223
278	1	75-4103		24	47-224
	2	Repealing Clause		25	47-225
	3	Effective Date		26	47-226
279	1	82-1014		27	47-227
	2	82-1015		28	47-228
	3	82-1016		29	Constitutionality
	4	Repealing Clause		30	Repealing Clause
	5	Effective Date	284	1	81-433
280	1	16-4601		2	81-433.1
	2	16-4602		3	Repealing Clause
	3	16-4603		4	Effective Date
	4	16-4604	285	1	69-3501
	5	16-4605		2	69-3502
	6	16-4606		3	69-3503
	7	16-4607		4	69-3504
	8	16-4608		5	69-3505
	9	16-4609		6	69-3506
	10	16-4610		7	69-3507
	11	16-4611		8	69-3508
	12	16-4612		9	69-3509
	13	16-4613		10	69-3510
	14	16-4614		11	69-3511
	15	16-4615		12	69-3512
	16	Separability Clause		13	69-3513
	17	Repealing Clause		14	69-3514
281	1	75-3804		15	69-3515
	2	Repealing Clause		16	69-3516
282	1	74-601		17	69-3517
	2	74-602		18	69-3518
	3	74-603		19	Savings Clause
	4	74-604		20	Repealing Clause
	5	74-605		21	Effective Date
	6	74-606	286	1	40-2601
	7	74-607		2	40-2602
	8	74-608		3	40-2603
	9	74-609		4	40-2604
	10	74-610		5	40-2605
	11	74-611		6	40-2606
	12	74-612		7	40-2607
	13	Separability Clause		8	40-2608
283	1	47-201		9	40-2609
	2	47-202		10	40-2610
	3	47-203		11	40-2611
	4	47-204		12	40-2612
	5	47-205		13	40-2613
	6	47-206		14	40-2614
	7	47-207		15	40-2615
	8	47-208		16	40-2616
	9	47-209		17	40-2617
	10	47-210		18	Separability Clause
	11	47-211		19	Effective Date
	12	47-212		20	40-2701
	13	47-213		21	40-2702
	14	47-214		22	40-2703
	15	47-215		23	40-2704
	16	47-216		24	40-2705
	17	47-217		25	40-2706
	18	47-218		26	40-2707
	19	47-219		27	40-2708
	20	47-220		28	40-2709
	21	47-221		29	40-2710
				30	40-2711

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
286	31	40-2712	286	95	40-3014
	32	40-2713		96	40-3015
	33	40-2714		97	40-3016
	34	40-2715		98	40-3101
	35	40-2716		99	40-3102
	36	40-2717		100	40-3103
	37	40-2718		101	40-3104
	38	40-2719		102	40-3105
	39	40-2720		103	40-3106
	40	40-2721		104	40-3107
	41	40-2722		105	40-3108
	42	40-2723		106	40-3109
	43	40-2724		107	40-3110
	44	40-2725		108	40-3111
	45	40-2726		109	40-3112
	46	40-2801		110	40-3113
	47	40-2802		111	40-3114
	48	40-2803		112	40-3115
	49	40-2804		113	40-3116
	50	40-2805		114	40-3117
	51	40-2806		115	40-3118
	52	40-2807		116	40-3119
	53	40-2808		117	40-3120
	54	40-2809		118	40-3121
	55	40-2810		119	40-3122
	56	40-2811		120	40-3123
	57	40-2812		121	40-3124
	58	40-2813		122	40-3125
	59	40-2814		123	40-3126
	60	40-2815		124	40-3127
	61	40-2816		125	40-3128
	62	40-2817		126	40-3129
	63	40-2818		127	40-3130
	64	40-2819		128	40-3131
	65	40-2820		129	40-3132
	66	40-2821		130	40-3133
	67	40-2822		131	40-3134
	68	40-2823		132	40-3201
	69	40-2824		133	40-3202
	70	40-2825		134	40-3203
	71	40-2826		135	40-3204
	72	40-2901		136	40-3205
	73	40-2902		137	40-3206
	74	40-2903		138	40-3207
	75	40-2904		139	40-3208
	76	40-2905		140	40-3209
	77	40-2906		141	40-3210
	78	40-2907		142	40-3211
	79	40-2908		143	40-3212
	80	40-2909		144	40-3213
	81	40-2910		145	40-3301
	82	40-3001		146	40-3302
	83	40-3002		147	40-3303
	84	40-3003		148	40-3304
	85	40-3004		149	40-3305
	86	40-3005		150	40-3306
	87	40-3006		151	40-3307
	88	40-3007		152	40-3308
	89	40-3008		153	40-3309
	90	40-3009		154	40-3310
	91	40-3010		155	40-3311
	92	40-3011		156	40-3312
	93	40-3012		157	40-3313
	94	40-3013		158	40-3314

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
286	159	40-3315	286	223	40-3521
	160	40-3316		224	40-3522
	161	40-3317		225	40-3601
	162	40-3318		226	40-3602
	163	40-3319		227	40-3603
	164	40-3320		228	40-3604
	165	40-3321		229	40-3605
	166	40-3322		230	40-3606
	167	40-3323		231	40-3607
	168	40-3324		232	40-3608
	169	40-3325		233	40-3609
	170	40-3326		234	40-3610
	171	40-3327		235	40-3611
	172	40-3328		236	40-3612
	173	40-3329		237	40-3613
	174	40-3330		238	40-3614
	175	40-3331		239	40-3615
	176	40-3401		240	40-3616
	177	40-3402		241	40-3617
	178	40-3403		242	40-3618
	179	40-3404		243	40-3619
	180	40-3405		244	40-3620
	181	40-3406		245	40-3621
	182	40-3407		246	40-3622
	183	40-3408		247	40-3623
	184	40-3409		248	40-3624
	185	40-3410		249	40-3625
	186	40-3411		250	40-3626
	187	40-3412		251	40-3627
	188	40-3413		252	40-3628
	189	40-3414		253	40-3629
	190	40-3415		254	40-3630
	191	40-3416		255	40-3631
	192	40-3417		256	40-3632
	193	40-3418		257	40-3633
	194	40-3419		258	40-3701
	195	40-3420		259	40-3702
	196	40-3421		260	40-3703
	197	40-3422		261	40-3704
	198	40-3423		262	40-3705
	199	40-3424		263	40-3706
	200	40-3425		264	40-3707
	201	40-3426		265	40-3708
	202	40-3427		266	40-3709
	203	40-3501		267	40-3710
	204	40-3502		268	40-3711
	205	40-3503		269	40-3712
	206	40-3504		270	40-3713
	207	40-3505		271	40-3714
	208	40-3506		272	40-3715
	209	40-3507		273	40-3716
	210	40-3508		274	40-3717
	211	40-3509		275	40-3718
	212	40-3510		276	40-3719
	213	40-3511		277	40-3720
	214	40-3512		278	40-3721
	215	40-3513		279	40-3722
	216	40-3514		280	40-3723
	217	40-3515		281	40-3724
	218	40-3516		282	40-3725
	219	40-3517		283	40-3726
	220	40-3518		284	40-3727
	221	40-3519		285	40-3728
	222	40-3520		286	40-3729



# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
286	287	40-3730	286	351	40-4001
	288	40-3731		352	40-4002
	289	40-3732		353	40-4003
	290	40-3733		354	40-4004
	291	40-3734		355	40-4005
	292	40-3735		356	40-4006
	293	40-3736		357	40-4007
	294	40-3737		358	40-4008
	295	40-3801		359	40-4009
	296	40-3802		360	40-4010
	297	40-3803		361	40-4011
	298	40-3804		362	40-4012
	299	40-3805		363	40-4013
	300	40-3806		364	40-4014
	301	40-3807		365	40-4015
	302	40-3808		366	40-4016
	303	40-3809		367	40-4017
	304	40-3810		368	40-4018
	305	40-3811		369	40-4019
	306	40-3812		370	40-4020
	307	40-3813		371	40-4021
	308	40-3814		372	40-4022
	309	40-3815		373	40-4023
	310	40-3816		374	40-4024
	311	40-3817		375	40-4025
	312	40-3818		376	40-4026
	313	40-3819		377	40-4027
	314	40-3820		378	40-4028
	315	40-3821		379	40-4029
	316	40-3822		380	40-4030
	317	40-3823		381	40-4031
	318	40-3824		382	40-4032
	319	40-3825		383	40-4033
	320	40-3826		384	40-4034
	321	40-3827		385	40-4101
	322	40-3828		386	40-4102
	323	40-3829		387	40-4103
	324	40-3830		388	40-4104
	325	40-3831		389	40-4105
	326	40-3832		390	40-4106
	327	40-3833		391	40-4107
	328	40-3901		392	40-4201
	329	40-3902		393	40-4202
	330	40-3903		394	40-4203
	331	40-3904		395	40-4204
	332	40-3905		396	40-4205
	333	40-3906		397	40-4206
	334	40-3907		398	40-4207
	335	40-3908		399	40-4208
	336	40-3909		400	40-4209
	337	40-3910		401	40-4210
	338	40-3911		402	40-4211
	339	40-3912		403	40-4212
	340	40-3913		404	40-4213
	341	40-3914		405	40-4214
	342	40-3915		406	40-4215
	343	40-3916		407	40-4216
	344	40-3917		408	40-4217
	345	40-3918		409	40-4301
	346	40-3919		410	40-4302
	347	40-3920		411	40-4401
	348	40-3921		412	40-4501
	349	40-3922		413	40-4502
	350	40-3923		414	40-4503

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
286	415	40-4601	286	479	40-4812
	416	40-4602		480	40-4813
	417	40-4603		481	40-4814
	418	40-4701		482	40-4815
	419	40-4702		483	40-4816
	420	40-4703		484	40-4817
	421	40-4704		485	40-4818
	422	40-4705		486	40-4819
	423	40-4706		487	40-4820
	424	40-4707		488	40-4821
	425	40-4708		489	40-4822
	426	40-4709		490	40-4823
	427	40-4710		491	40-4824
	428	40-4711		492	40-4825
	429	40-4712		493	40-4826
	430	40-4713		494	40-4827
	431	40-4714		495	40-4828
	432	40-4715		496	40-4829
	433	40-4716		497	40-4830
	434	40-4717		498	40-4831
	435	40-4718		499	40-4832
	436	40-4719		500	40-4833
	437	40-4720		501	40-4834
	438	40-4721		502	40-4835
	439	40-4722		503	40-4836
	440	40-4723		504	40-4837
	441	40-4724		505	40-4838
	442	40-4725		506	40-4839
	443	40-4726		507	40-4840
	444	40-4727		508	40-4841
	445	40-4728		509	40-4842
	446	40-4729		510	40-4843
	447	40-4730		511	40-4844
	448	40-4731		512	40-4845
	449	40-4732		513	40-4846
	450	40-4733		514	40-4847
	451	40-4734		515	40-4848
	452	40-4735		516	40-4849
	453	40-4736		517	40-4850
	454	40-4737		518	40-4851
	455	40-4738		519	40-4852
	456	40-4739		520	40-4853
	457	40-4740		521	40-4901
	458	40-4741		522	40-4902
	459	40-4742		523	40-4903
	460	40-4743		524	40-4904
	461	40-4744		525	40-4905
	462	40-4745		526	40-4906
	463	40-4746		527	40-4907
	464	40-4747		528	40-4908
	465	40-4748		529	40-4909
	466	40-4749		530	40-4910
	467	40-4750		531	40-4911
	468	40-4801		532	40-4912
	469	40-4802		533	40-4913
	470	40-4803		534	40-4914
	471	40-4804		535	40-4915
	472	40-4805		536	40-4916
	473	40-4806		537	40-4917
	474	40-4807		538	40-5001
	475	40-4808		539	40-5002
	476	40-4809		540	40-5003
	477	40-4810		541	40-5004
	478	40-4811		542	40-5005

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
286	543	40-5006	286	606	40-5208
	544	40-5007		607	40-5209
	545	40-5008		608	40-5210
	546	40-5009		609	40-5211
	547	40-5010		610	40-5212
	548	40-5011		611	40-5213
	549	40-5012		612	40-5214
	550	40-5013		613	40-5215
	551	40-5014		614	40-5301
	552	40-5015		615	40-5302
	553	40-5016		616	40-5303
	554	40-5017		617	40-5304
	555	40-5018		618	40-5305
	556	40-5019		619	40-5306
	557	40-5020		620	40-5307
	558	40-5021		621	40-5308
	559	40-5022		622	40-5309
	560	40-5023		623	40-5310
	561	40-5024		624	40-5311
	562	40-5025		625	40-5312
	563	40-5026		626	40-5313
	564	40-5027		627	40-5314
	565	40-5028		628	40-5315
	566	40-5101		629	40-5316
	567	40-5102		630	40-5317
	568	40-5103		631	40-5318
	569	40-5104		632	40-5319
	570	40-5105		633	40-5320
	571	40-5106		634	40-5321
	572	40-5107		635	40-5322
	573	40-5108		636	40-5323
	574	40-5109		637	40-5324
	575	40-5110		638	40-5325
	576	40-5111		639	40-5326
	577	40-5112		640	40-5327
	578	40-5113		641	40-5328
	579	40-5114		642	40-5329
	580	40-5115		643	40-5330
	581	40-5116		644	40-5331
	582	40-5117		645	40-5332
	583	40-5118		646	40-5333
	584	40-5119		647	40-5334
	585	40-5120		648	40-5335
	586	40-5121		649	40-5336
	587	40-5122		650	40-5337
	588	40-5123		651	40-5338
	589	40-5124		652	40-5339
	590	40-5125		653	40-5340
	591	40-5126		654	40-5341
	592	40-5127		655	40-5342
	593	40-5128		656	40-5343
	594	40-5129		657	40-5344
	595	40-5130		658	40-5345
	596	40-5131		659	40-5346
	597	40-5132		660	40-5347
	598	40-5133		661	40-5348
	599	40-5201		662	40-5349
	600	40-5202		663	40-5350
	601	40-5203		664	40-5351
	602	40-5204		665	40-5352
	603	40-5205		666	40-5353
	604	40-5206		667	40-5354
	605	40-5207			

# TABLE OF SESSION LAWS

1959

Ch.	Sec.	Herein	Ch.	Sec.	Herein
286	668	40-5355	286	671	40-5358
	669	40-5356		672	40-5359
	670	40-5357		673	Repealing Clause





# REVISED CODES OF MONTANA

## VOLUME 1

### Part 2

### 1959 Cumulative Pocket Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 1 (PART 2) OF  
THE 1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1  
(PART 2) THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

#### *Edited by*

JOHN W. TRANBERG

#### and

THE PUBLISHERS' EDITORIAL STAFF

#### *Editorial Supervisor*

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers  
Indianapolis, Indiana



COPYRIGHT 1959

*by*

THE ALLEN SMITH COMPANY

## NEW LAWS IN VOLUME 1 (Part 2)

For index see pocket supplement to Replacement Volume 9

### ENACTED IN 1959

Alcoholic beverage bottle clubs, prohibited, 4-172, 4-173.  
Change of name of state orphan's home to Montana Children's Center, 10-101.1.  
Commercial feed stop sale or use orders, 3-2011.  
Intrastate transactions with paints, etc., labeling, 3-1510 to 3-1515.  
Police commission, third class cities, 11-1804.1.  
Urban Renewal Law, 11-3901 to 11-3920.  
Zoning powers, exercise by county commissioners, 11-2710.

### AMENDMENTS IN VOLUME 1 (Part 2)

Agriculture,  
    Commercial feeds, 3-2004.  
    Grain standards, 3-228.  
Alcoholic beverages,  
    Beer Act, 4-303, 4-317, 4-324, 4-333, 4-349.  
    Retail Liquor License Act, 4-403, 4-414.  
Banks and banking, 5-506.  
    Examination fees, 5-904 to 5-910.  
Cities and towns,  
    Annexation, 11-403.  
    Contracts, 11-1202.  
    Fire departments, 11-1912, 11-1918, 11-1919.  
    Fire protection in unincorporated areas, 11-2008, 11-2010, 11-2030.  
    Metropolitan Police Law, 11-1806, 11-1814, 11-1823.  
    Municipal bonds and indebtedness, 11-2310, 11-2316.  
    Municipal Revenue Bond Act, 11-2402.  
    Planning boards, 11-3804, 11-3812, 11-3830, 11-3842, 11-3852 to 11-3854.  
    Power of councils, 11-966.  
    Special improvement districts, 11-2204, 11-2231.  
Commercial fertilizers, 3-1709.  
Juvenile courts and juvenile delinquents, 10-617.





# MONTANA REVISED CODES

---

## TITLE 1—AERONAUTICS

### CHAPTER 2—STATE AERONAUTICS COMMISSION

#### 1-204. General powers and duties of commission.

##### Expert Witness

An officer and employee of the state aeronautical commission may not be required to testify as an expert witness in

any suit, action, or proceeding involving any aircraft. *McCutcheon v. Larsen*, — M —, 333 P 2d 1013, 1015.

### CHAPTER 5—MISCELLANEOUS

#### 1-502. Aeronautics functions governmental—no liability for torts.

##### Immunity from Suit

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 459.

result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

##### Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself

### CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

#### 1-822. Public purpose, county and municipal purpose.

##### Immunity from Suit

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 459.

result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

##### Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself

## TITLE 2—AGENCY

### CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

#### 2-106. (7933) Ostensible agency.

##### Acts and Statements Establishing Agency

Where a husband signed a letter employing an attorney and where his wife conferred with the attorney several times and approved his actions with the hus-

band's knowledge and without his expressed disapproval, and where the husband claimed the benefits of the attorney's actions, the wife was the ostensible agent of the husband. *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

#### 2-118. (7941) Ratification of part of a transaction.

##### Operation and Effect

Where a landowner claimed the benefit of an attorney's action in clearing title by paying part of a tax claim as part of a settlement, the landowner ratified other

stipulations entered into by the attorney as a part of the same settlement and embodied in the same decree. *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

### CHAPTER 2—MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

#### 2-212. (7968) Agent's responsibility to third persons.

##### Operation and Effect

Where seller at auction sale required assurances from principal before it would accept the agent's drafts on principal in payment for cattle purchased, the seller could not hold the agent personally liable

on the contract even though it permitted the agent to bid in at the auction without disclosing his principal. *Yellowstone Livestock Comm. v. Dupuis*, 133 M 454, 325 P 2d 691.

## TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

- Chapter 2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-228.
15. Miscellaneous powers and duties of department of agriculture, 3-1510 to 3-1515.
17. Commercial fertilizer—regulation of sale, 3-1709.
18. Hay dealers—bond and license, Repealed—Section 1, Chapter 81, Laws of 1959.
20. Commercial feeds—regulation, 3-2004, 3-2011.

### CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION— REGULATION OF GRAIN WAREHOUSEMEN

Section 3-228. Bond—license and fees of warehousemen, track-buyers and others—penalty for operating without license.

**3-228. (3589) Bond—license and fees of warehousemen, track-buyers and others—penalty for operating without license.** Each person, firm, corporation or association of persons operating any public warehouse or warehouses subject to the provisions of this act, and every track-buyer, dealer, broker, or commission man, or person or association of persons, merchandising in grain shall, on or before the first day of July of each year, give a bond with good and sufficient sureties to be approved by the commissioner of agriculture to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by the law.

Every person or persons, firm, co-partnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track-buyer, dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen (\$15.00) dollars for each and every warehouse, elevator, or other place, owned, conducted, or operated by such person or persons, firm, co-partnership, corporation or association of persons, where grain is received, stored and shipped, and upon the payment of such fee of fifteen (\$15.00) dollars for each and every warehouse, elevator or other place, where grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, co-partnership, corporation or association of persons, a license to engage in grain merchandising at the place designated within the state of Montana, for a period of one (1) year. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked (save only that a public warehouseman shall be permitted to deliver grain previously stored with him), shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, and each



and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

In addition to the bond and license fee, a public warehouseman shall carry adequate insurance approved by the commissioner of agriculture to protect the holders of warehouse receipts from loss. A public warehouseman license shall not be issued or may be revoked for failure to comply with this insurance requirement.

**History:** En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 1, Ch. 145, L. 1959.

**Repealing Clause**

Section 2 of Ch. 145, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment added the last paragraph to this section.

CHAPTER 15—MISCELLANEOUS POWERS AND DUTIES OF  
DEPARTMENT OF AGRICULTURE

- Section 3-1510. Intrastate transactions with paints, etc.—label—contents of label.  
3-1511. Penalty for violations.  
3-1512. Possession as prima facie evidence.  
3-1513. Enforcement of act.  
3-1514. Designation of laboratory for analysis—report of analysis.  
3-1515. County attorney—duties regarding act.

**3-1510. Intrastate transactions with paints, etc.—label—contents of label.** Every person, firm, or corporation, who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state, any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coatings or additives for wood, metal, concrete, or roof coatings, but excluding artists' colors, waxes and polishes, shall label the same in a clear and distinct manner. Such label shall recite a full analysis of the content with a specification of pigment and vehicle. An analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition shall be subject to inspection by the chief chemist of a laboratory designated by the department of agriculture of the state of Montana.

**History:** En. Sec. 1, Ch. 69, L. 1959.

**Title of Act**

An act requiring the labeling of all containers of paints, varnishes, roof coatings and other protective and decorative materials offered for sale, sold, or shipped

in intrastate transactions within the state; providing for the inspection and analysis of paints, varnishes, roof coatings and other protective and decorative materials by a chief chemist designated by the department of agriculture; providing for penalties for violation of this act.

**3-1511. Penalty for violations.** Any person, firm, or corporation who fails to comply with all of the provisions of this act shall be subject to prosecution and upon conviction, to a fine of not less than twenty-five (\$25.00) dollars and not more than one hundred (\$100.00) dollars and all costs, including cost of analysis to the amount of twenty-five (\$25.00) dollars or by imprisonment in a county jail not to exceed sixty (60) days.

**History:** En. Sec. 2, Ch. 69, L. 1959.

**3-1512. Possession as prima facie evidence.** The possession, either constructive or actual by any person, firm, or corporation dealing in said articles or substances hereinabove described and not properly labeled as provided by section 1 [3-1510] of this act, shall be considered prima facie evidence that the same is kept for sale in violation of the provisions of this act and punishable under it.

**History:** En. Sec. 3, Ch. 69, L. 1959.

**3-1513. Enforcement of act.** The department of agriculture of the state of Montana shall be responsible for the enforcement of this act and shall appoint any assistants or agents deemed necessary for the proper enforcement of all the provisions of this act. These appointed agents or assistants shall be duly authorized for the purpose, and shall have access to all places of business, factories, stores and buildings used for the manufacture or sale of paints or other products described in section 1 [3-1510] of this act. They shall have the power and authority to purchase and open any package, can, jar, tub or other receptacle containing any of the articles recited in section 1 [3-1510] of this act.

**History:** En. Sec. 4, Ch. 69, L. 1959.

**3-1514. Designation of laboratory for analysis—report of analysis.** The department of agriculture of the state of Montana shall designate the laboratory where analysis of the products recited in section 1 [3-1510] of this act shall be made. When analysis of the products mentioned in section 1 [3-1510] of this act are found to be in violation of this act, the chief chemist of the laboratory appointed and designated by the department of agriculture shall report the facts of his tests to the department of agriculture. Every certificate duly signed and acknowledged by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in section 1 [3-1510] of this act shall be presumptive evidence of the facts therein stated.

**History:** En. Sec. 5, Ch. 69, L. 1959.

**3-1515. County attorney—duties regarding act.** It shall be the duty of the county attorney of the county of the state of Montana wherein the violation of this act occurred, to prosecute every person, firm, or corporation violating any of the provisions of this act when the evidence thereof has been presented by the chief chemist of the laboratory making the analysis as provided for in this act.

**History:** En. Sec. 6, Ch. 69, L. 1959.

## CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE

Section 3-1709. Report of analyses—expenses, how paid.

**3-1709. (4208.9) Report of analyses—expenses, how paid.** All such analyses of commercial fertilizer, as required by this act, shall be reported to the commissioner of agriculture of the state of Montana. All expenses for such analyses, together with supplies of all kinds needed for making the same, and also the traveling and other expenses incurred in collecting samples, as required herein, together with all administrative expenses including the expense of publishing reports, shall be provided and paid

out of the fund hereinafter specified, arising from the license fees. All license fees provided for in section 3-1705 shall be paid to the commissioner of agriculture and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees in the general fund and ninety-five per cent (95%) of all such fees in the fund used for the purposes specified in this section. All claims hereunder shall be verified and filed with and audited by the commissioner of agriculture and by him presented for allowance by the state board of examiners, in the same manner as all claims contracted for and in behalf of the state of Montana. It shall be the duty of the commissioner of agriculture to enforce this act and for that purpose, he shall make all proper and necessary rules and regulations.

**History:** En. Sec. 9, Ch. 153, L. 1931; amd. Sec. 4, Ch. 183, L. 1939; amd. Sec. 1, Ch. 33, L. 1959.

#### **Amendment**

The 1959 amendment generally revised this section. For section prior to amendment see parent volume.

#### **Appropriation**

Section 2 of Ch. 33, Laws 1959 read "There is now a fund in existence constituted in the manner and for the purposes specified in section 3-1709 of the Revised Codes of Montana, 1947, which fund has

been designated as Fund No. 065, Commercial Fertilizer. Five per cent (5%) of the balance of said Fund No. 065 on July 1, 1959, shall be placed in the general fund by the state treasurer and ninety-five per cent (95%) of said balance as of said date shall remain in said Fund No. 065 to effect the purposes of the act as heretofore specified."

#### **Repealing Clause**

Section 3 of Ch. 33, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### **CHAPTER 18—HAY DEALERS—BOND AND LICENSE**

(Repealed—Section 1, Chapter 81, Laws of 1959)

#### **3-1801 to 3-1807. Repealed.**

##### **Repeal**

These sections (Secs. 1 to 7, Ch. 204, L. 1937), relating to the licensing of hay

dealers, were repealed by Sec. 1, Ch. 81, Laws 1959, effective March 2, 1959.

### **CHAPTER 20—COMMERCIAL FEEDS—REGULATION**

Section 3-2004. Fee payable for each registered brand or formula—disposition of fee—feed sold in bulk.

3-2011. Stop orders.

**3-2004. Fee payable for each registered brand or formula—disposition of fee—feed sold in bulk.** Each and every manufacturer, importer, jobber, firm, association, corporation, or person selling, or distributing any commercial feeds as defined in section 3-2001 shall pay annually to the commissioner a registration fee of ten dollars (\$10.00) for each brand or feed formula registered. In the case of mixed feeds containing more than a total of ten per cent (10%) of one or more mineral ingredients, or other unmixed materials used as mineral supplements, and in the case of mineral feeds, mixed or unmixed, which are manufactured, represented and sold for the primary purpose of correcting mineral deficiencies in rations for animals or poultry, and containing mineral ingredients generally regarded as dietary factors essential for normal nutrition, the annual registration fee shall be fifteen dollars (\$15.00). All such fees and charges



so collected shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the fund used for purposes specified herein which constitutes a fund for the payment of the cost of inspections, sampling, analyses, and other expenses necessary for putting into effect the provisions of this act. When feed is sold in bulk or in packages belonging to the purchaser, the manufacturer, importer, jobber, firm, association, corporation or person so selling shall furnish the purchaser with a card or cards upon which appears the statement required by the provisions of section 3-2002.

The registration fee and tax as provided in this section shall not apply to any feed mixed according to a formula furnished by a consumer or purchaser nor to the grains furnished by the consumer or purchaser which may be ground for his own personal use. Any feed mixed to a formula furnished by a consumer or purchaser which finds general use in the community shall be registered as a brand and subject to all provisions of this act.

**History:** En. Sec. 4, Ch. 228, L. 1943; amd. Sec. 1, Ch. 42, L. 1951; amd. Sec. 1, Ch. 166, L. 1959.

#### Amendment

The 1959 amendment substituted the third sentence and that part of the fourth sentence from the beginning down through the words "specified herein which constitutes" for the words "Fees so collected shall constitute."

#### Fund—Transfer of Portion

Section 2 of Ch. 166, Laws 1959 read "There is now a fund in existence, constituted in the manner and for the purposes specified in section 3-2004 of the

Revised Codes of Montana, 1947, as amended by section 1, Chapter 42 of the Montana Session Laws of 1951, which fund has been designated as Fund No. 164, Commercial Feeds. Five per cent (5%) of the balance of said Fund No. 164 on July 1, 1959, shall be placed in the general fund by the state treasurer and ninety-five per cent (95%) of said balance as of said date shall remain in said Fund No. 164 to effect the purposes of the act as heretofore specified."

#### Repealing Clause

Section 3 of Ch. 166, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**3-2011. Stop Orders.** The commissioner of agriculture may issue and enforce stop sale, use or removal orders to the owner or custodian of any lot of commercial feed when the commissioner or his authorized agent has reasonable cause to believe that said feed is being offered or exposed for sale in violation of any of the provisions of sections 3-2001 through 3-2010, Revised Codes of Montana, 1947. On receipt of the order, the owner or custodian shall not dispose of said feed until the provisions hereinbefore cited have been complied with and the feed is released in writing by the commissioner. The violation of any order shall be a misdemeanor.

**History:** En. 3-2011 by Sec. 1, Ch. 82, L. 1959.

#### Title of Act

An act providing for a section to be known as section 3-2011 and authorizing the commissioner of agriculture to issue stop sale, use or removal orders on com-

mercial feed: providing a penalty for violation of any order and containing a repealing clause.

#### Repealing Clause

Section 2 of Ch. 82, Laws 1959 repealed all acts and parts of acts in conflict therewith.



## TITLE 4—ALCOHOLIC BEVERAGES

- Chapter 1. State liquor control act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-172, 4-173.
3. Montana beer act—licensing sale of beer under supervision of state liquor control board, 4-303, 4-317, 4-324, 4-333, 4-349.
4. Montana retail liquor license act—sales by licensees of board, 4-403, 4-414.

### CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA— LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

- Section 4-172. Bottle clubs prohibited.
- 4-173. Violation—penalty—abatement as nuisance.

**4-172. Bottle clubs prohibited.** The operation of a beer or liquor, or alcoholic beverage bottle club is hereby prohibited by any person, persons, partnership, firm, corporation or association.

**History:** En. Sec. 1, Ch. 200, L. 1959.

#### **Title of Act**

An act to prohibit any person, persons, partnership, firm, corporation or associa-

tion from operating a beer, liquor or other alcoholic beverage, bottle club, and providing a penalty therefor; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

**4-173. Violation—penalty—abatement as nuisance.** A violation of this act shall be deemed a nuisance and may be abated, and any person, persons, partnership, firm, corporation or association found guilty of violating this section shall be punished by fine of not more than five hundred dollars (\$500.00), or by six (6) months in the county jail, or by both such fine and imprisonment.

**History:** En. Sec. 2, Ch. 200, L. 1959.

#### **Repealing Clause**

Section 3 of Ch. 200, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 200, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

### CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (continued)— INTERDICTION AND OTHER ENFORCEMENT PROVISIONS— FINANCE—MISCELLANEOUS

**4-240. License tax on liquor—amount—distribution of proceeds.**

#### **References**

Cited in Hill v. Billings, — M —, 328  
P 2d 1112, 1116.

### CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

- Section 4-303. Closing hours for licensed retail beer establishments.
- 4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.
- 4-324. Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.
- 4-333. Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation.
- 4-349. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially.

**4-303. Closing hours for licensed retail beer establishments.** Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

(a) Sunday from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the times such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance.

**History:** En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959.

words "election at which state and national officers are elected"; inserted the words "but not upon the day of any other election" and deleted a provision calling for the closing of establishments at special bond elections.

**Amendment**

The 1959 amendment in subd. (c) inserted the word "biennial"; inserted the

**4-317. (2815.22) Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.** (1) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section 4-341 and upon presenting satisfactory evidence to the board as required by section 4-310, shall be licensed by the board in accordance with the provisions of this act and such regulations as may be prescribed by the board, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

(2) In addition to the annual license tax imposed by section 4-341, a tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311.

**History:** En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959.

**Amendment**

The 1959 amendment increased the barrelage tax from \$1.00 to \$1.50 per barrel.

**4-324. (2815.29) Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.** A tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at

the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for.

**History:** En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959.

**Amendment**

The 1959 amendment increased the bar-  
relage tax from \$1.00 to \$1.50 per barrel.

**Repealing Clause**

Section 3 of Ch. 135, Laws 1959 re-  
pealed all acts and parts of acts in conflict  
therewith.

**Effective Date**

Section 4 of ch. 135, Laws 1959 read  
"This act shall be in full force and effect  
from and after May 1st, 1959."

**4-333. (2815.36) Issuance of retail beer licenses—limit on number of—  
off-premises beer licenses—lapse and cancellation.**

(1)(a), (b) and (2). \* \* \* [Subdivisions (1)(a), (b) and (2), same  
as parent volume.]

(3) From and after February 1, 1949, any retail license issued pursu-  
ant to this act (including any retail license to sell beer for off-premises  
consumption), not actually used in a going establishment for a period of  
ninety (90) days, shall automatically lapse. Upon determining the fact  
of nonuser for such period the board shall cancel such license of record  
and no portion of the fee paid therefor shall be refundable. The provi-  
sions of this subsection shall not apply to the license of any licensee whose  
premises are operated on a seasonal basis in connection with a bona fide  
dude ranch, resort, park hotel, tourist facility or like business, provided  
such licensee has secured written authority from the board to close his  
licensed premises for a specified period of greater than ninety (90) days'  
duration, and providing further that should the liquor control board  
determine that such lapse was reasonably beyond the control of the li-  
censee, then the lapse provision set out above shall not apply.

**History:** En. Sec. 14, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959.

**Amendment**

The 1959 amendment added the proviso  
at the end of subd. 3.

**Repealing Clause**

Section 2 of Ch. 205, Laws 1959, re-  
pealed all acts and parts of acts in conflict  
therewith.

**Effective Date**

Section 3 of Ch. 205, Laws 1959 pro-  
vided the act should be in effect from and  
after its passage and approval. Approved  
March 10, 1959.

**4-349. (2815.51) Brewers and wholesalers not to supply fixtures, etc.,  
to retailers, except as specified—brewers not to be interested in retailer  
financially.** (a) It shall be unlawful for any brewer or wholesaler to  
lease, furnish, give or pay for any premises, furniture, fixtures, equip-  
ment, signs, or any other advertising matter or any other property to any  
retail licensee, used or to be used in the dispensation of beer in and about  
the interior or exterior of the place of business of any licensed retailer,  
or furnish, give, or pay for any repairs, improvements, painting or deco-  
rating on or within such premises; provided, however, that it shall be



lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars (\$15.00) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than three hundred (300) square inches in area, and both not in excess of fifty dollars (\$50.00) in value, exclusive of installation charges, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

(b) No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefore within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the board in its discretion.

**History:** En. Sec. 18, Ch. 46, Ex. L. 1933; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959.

**Repealing Clause**

Section 2 of Ch. 110, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment added the last sentence to subd. (b).



CHAPTER 4—MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY  
LICENSEES OF BOARD

Section 4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.

4-414. Hours for sale of liquor.

**4-401. Declaration of policy as to retail sale of liquor.****References**

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974.

**4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.**

(1)(a), (b). \* \* \* [Subdivisions (1)(a), (b), same as parent volume.]

(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefore shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

**History:** En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959.

**Repealing Clause**

Section 2 of Ch. 206, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 206, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

**Amendment**

The 1959 amendment added the proviso at the end of subd. (2).

**4-414. Hours for sale of liquor.** No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which the sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

**History:** En. Sec. 12, Ch. 84, L. 1937; amd. Sec. 2, Ch. 162, L. 1959.

**Amendment**

The 1959 amendment inserted the word "biennial"; inserted the phrase "at which state and national officers are elected" and

substituted the phrase "but not upon the day of any other election; provided however" for the words "excepting bond elections."

**Repealing Clause**

Section 3 of Ch. 162, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**4-417. Excise liquor tax—collection.**

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957. Approved at Referendum, Nov. 4, 1958.

**Effective Date**

Section 4 of Ch. 162, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

**Compiler's Note**

This section was submitted to the qualified electors of the state of Montana and approved by them on November 4, 1958, effective under Governor's proclamation of November 28, 1958 from and after the date of proclamation. The section as approved is set out in the parent volume.

**4-420. Penalty for sale of alcoholic liquor without license.**

**Title Defect Cured**

Since chapter 84 of the 1937 Session Laws was incorporated without reference to the original title in the Revised Codes of Montana 1947, as this section, and the Revised Codes of Montana 1947 were approved, legalized and adopted by the leg-

islature by the provisions of chapter 4 of the Laws of 1951 which now appear as section 12-330, any defect or omission in the title of the 1937 law was thereby cured. State v. Garcia, 132 M 600, 319 P 2d 962, 963.

**4-425. Denial of application for license or renewal—suspension, etc.**

**License Issued under Mandate**

Where, after stay of execution was denied, the liquor control board did not apply for supersedeas from the supreme court but issued a license in compliance with a district court mandate, the ques-

tion whether the mandate was proper did not present a justiciable controversy for the supreme court, even under section 93-8024. Gill v. Rafn, 133 M 505, 326 P 2d 974.

## TITLE 5—BANKS AND BANKING

Chapter 5. Miscellaneous regulatory provisions, 5-506.

9. Examination and supervision—state examiner's fund, 5-904 to 5-910.

### CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

Section 5-506. Limitation on real estate loans.

**5-506. (6014.31) Limitation on real estate loans.** Any commercial bank organized under the laws of the state of Montana may make real estate loans, secured by first liens upon improved real estate, including improved farm land and improved business and residential properties and may purchase any obligation so secured when the entire amount of such obligation is sold to the bank. Provided that, the amount of any such loan hereafter made shall not exceed fifty per centum (50%) of the appraised value of the real estate offered as security, and no such loan shall be made for a longer period than five (5) years, except that:

(1) Any such loan may be made in an amount not to exceed sixty per centum (60%) of the appraised value of the real estate offered as security and for a term not longer than twenty (20) years if such loan is secured by an amortized mortgage, deed of trust or other such instrument, under the terms of which the installment payments are sufficient to amortize forty per centum (40%) or more of the principal of the loan within a period of not more than twenty (20) years; and

(2) No such commercial bank shall make such loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of sixty per centum (60%) of the amount of its time and saving deposits, whichever is the greater.

Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed six (6) months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, shall not be considered as loans secured by real estate within the meaning of this act, but shall be classed as ordinary commercial loans, provided that no commercial bank shall invest in or be liable on any such loans in an aggregate amount in excess of fifty per centum (50%) of its actually paid in and unimpaired capital.

Loans made to establish rural or commercial businesses which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment shall have been made by a federal reserve bank or in which the Reconstruction Finance Corporation cooperated or purchases a participation in, shall not be subject to the restrictions or limitations of this act upon loans secured by real estate, provided any commercial bank in this state shall from time to time have the same authority to make loans upon real estate as may be

given by acts of Congress of the United States or the federal reserve system to national banks or bank members of the federal reserve system.

(3) The foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of any act of the Congress of the United States; and said limitations and restrictions shall not apply to the making, extension or renewal of any loans which are made under subchapter II of the act of Congress, known as the servicemen's readjustment act of 1944, or any amendment thereof or supplement thereto, as to any part of such loans.

These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust thereon on such real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of such bank, such subsequent liens are necessary further to secure the payment of any debts and save such bank from loss; provided, the term "commercial bank" as used in this section, shall mean a bank organized to do the business specified in sections 5-104 to 5-108 of this code, only.

**History:** En. Sec. 27, Ch. 89, L. 1927; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959.

**Repealing Clause**

Section 2 of Ch. 25, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment in subd. (1) increased the term from "ten (10) years" to "twenty (20) years" both times it appeared.

CHAPTER 9—EXAMINATION AND SUPERVISION—STATE  
EXAMINER'S FUND

- Section 5-904. Payments by counties.  
5-905. Payments by cities and towns.  
5-906. Payments by county free high schools.  
5-907. Payments by irrigation districts.  
5-908. Payments by banks, investment and trust companies.  
5-909. Payments by building and loan associations.  
5-910. Special examinations and fees.

**5-904. (6014.78) Payments by counties.** For the credit of the state general fund each county of the state, shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year as follows:

Counties having a taxable valuation of five million dollars (\$5,000,000) or less, shall pay one hundred dollars (\$100.00) for each one million dollars (\$1,000,000) of taxable valuation, or fraction thereof;

Counties having a taxable valuation of more than five million dollars (\$5,000,000), but less than twenty million dollars (\$20,000,000), shall pay five hundred dollars (\$500.00), plus seventy-five dollars (\$75.00), for each



one million dollars (\$1,000,000) of taxable valuation in excess of five million dollars (\$5,000,000) or fraction thereof;

Counties having a taxable valuation of more than twenty million dollars (\$20,000,000), but less than forty million dollars (\$40,000,000), shall pay sixteen hundred twenty-five dollars (\$1625.00) plus fifty dollars (\$50.00) for each one million dollars (\$1,000,000) of taxable valuation in excess of twenty million dollars (\$20,000,000) or fraction thereof;

Counties having a taxable valuation in excess of forty million dollars (\$40,000,000) shall pay twenty-six hundred twenty-five dollars (\$2625.00) plus twenty-five dollars (\$25.00) for each one million dollars (\$1,000,000) of taxable valuation in excess of forty million dollars (\$40,000,000) or fraction thereof;

The minimum payment hereunder for any one county shall be three hundred fifty dollars (\$350.00).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county within the calendar year in which the fee is payable.

**History:** En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 49, L. 1953; amd. Sec. 1, Ch. 186, L. 1959.

a provision providing for a maximum fee. For section prior to amendment see parent volume.

#### **Amendment**

The 1959 amendment generally revised this section changing the fees and deleted

#### **Repealing Clause**

Section 2 of Ch. 186, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**5-905. (6014.79) Payments by cities and towns.** For the credit of such fund each city and town of the state shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year, as follows:

Cities and towns having a taxable valuation of fifty thousand dollars (\$50,000) or less, fifty dollars (\$50);

Cities and towns having a taxable valuation of from fifty thousand dollars (\$50,000) to one hundred thousand dollars (\$100,000), sixty-five dollars (\$65);

Cities and towns having a taxable valuation of from one hundred thousand dollars (\$100,000) to two hundred thousand dollars (\$200,000), eighty dollars (\$80);

Cities and towns having a taxable valuation of from two hundred thousand dollars (\$200,000) to four hundred thousand dollars (\$400,000), one hundred five dollars (\$105);

Cities and towns having a taxable valuation of from four hundred thousand dollars (\$400,000) to six hundred thousand dollars (\$600,000), one hundred thirty dollars (\$130);

Cities and towns having a taxable valuation of from six hundred thousand dollars (\$600,000) to eight hundred thousand dollars (\$800,000), one hundred sixty dollars (\$160);

Cities and towns having a taxable valuation of from eight hundred thousand [dollars] (\$800,000) to one million dollars (\$1,000,000), two hundred dollars (\$200);



Cities and towns having a taxable valuation of from one million dollars (\$1,000,000) to one million two hundred fifty thousand dollars (\$1,250,000), two hundred forty dollars (\$240);

Cities and towns having a taxable valuation of from one million two hundred fifty thousand dollars (\$1,250,000) to one million five hundred thousand dollars (\$1,500,000), three hundred twenty dollars (\$320);

Cities and towns having a taxable valuation of from one million five hundred thousand dollars (\$1,500,000) to two million dollars (\$2,000,000), four hundred dollars (\$400);

Cities and towns having a taxable valuation of from two million dollars (\$2,000,000) to three million dollars (\$3,000,000), four hundred eighty dollars (\$480);

Cities and towns having a taxable valuation of from three million dollars (\$3,000,000) to four million dollars (\$4,000,000), five hundred sixty dollars (\$560);

Cities and towns having a taxable valuation of from four million dollars (\$4,000,000) to five million dollars (\$5,000,000), six hundred forty dollars (\$640);

Cities and towns having a taxable valuation of more than five million dollars (\$5,000,000), shall pay six hundred forty dollars (\$640) plus fifty dollars (\$50) for each million dollars of taxable valuation or fraction thereof in excess of five million dollars (\$5,000,000);

The said fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a city or town within the calendar year in which the fee is payable.

**History:** En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 48, L. 1953; amd. Sec. 1, Ch. 138, L. 1959.

increased the fee in each classification for examination and deleted a sentence which set a maximum fee for any city at \$1,000.

#### **Amendment**

The 1959 amendment in the first sentence substituted the words "such fund" for the words "state general fund"; in-

#### **Repealing Clause**

Section 2 of Ch. 138, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**5-906. (6014.80) Payments by county free high schools.** For the credit of the state general fund, each county free high school shall pay to the state treasurer on or before the first day of July of each year a fee according to the following rates:

County free high schools having a maximum attendance record as shown in the records of the office of the state superintendent of public instruction, according to the following schedule;

All county free high schools having an attendance of two hundred (200) or less, sixty dollars (\$60);

All county free high schools having an attendance of in excess of two hundred (200) and not exceeding three hundred (300), seventy-five dollars (\$75);

All county free high schools having an attendance in excess of three hundred (300) and not exceeding four hundred (400), one hundred dollars (\$100);

All county free high schools having an attendance in excess of four hundred (400) and not exceeding six hundred (600) one hundred twenty-five dollars (\$125);

All county free high schools having an attendance in excess of six hundred (600) and not exceeding one thousand (1000), one hundred fifty dollars (\$150);

All county free high schools having an attendance in excess of one thousand (1000) and not exceeding fifteen hundred (1500), two hundred dollars (\$200);

All county free high schools having an attendance in excess of fifteen hundred (1500), three hundred dollars (\$300).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county free high school within the calendar year in which the fee is payable.

That the fees for examining auxiliary funds of a county free high school, when requested by the trustees of the said high school, or deemed necessary by the state examiner, shall be based on the fees as set forth in section 5-910.

**History:** En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 50, L. 1953; amd. Sec. 1, Ch. 139, L. 1959.

#### **Repealing Clause**

Section 2 of Ch. 139, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1959 amendment raised the amount of the fee in each instance. For fees prior to amendment see parent volume.

**5-907. (6014.81) Payments by irrigation districts.** For the credit of said fund, each irrigation district under the supervision of the state examiner, shall pay to the state treasurer, within sixty (60) days from the date of examination, the following amounts as charges for such examinations, to be computed by the state examiner: For each day spent in the examination of books and records of any irrigation district by the state examiner or his representative, a charge of sixty dollars (\$60.00) shall be made; and, for any fraction of a day spent in the examination of any irrigation district's books and records, a charge of seven and one-half dollars (\$7.50) per hour shall be made. It shall be the duty of the state examiner, or his representative, to notify the secretaries of such districts of the time of presenting the books and records at the courthouse for examination.

**History:** En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 195, L. 1945; amd. Sec. 1, Ch. 159, L. 1959.

#### **Repealing Clause**

Section 2 of Ch. 159, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

**5-908. (6014.82) Payments by banks, investment and trust companies.** For the credit of said fund, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July of each year, a fee

based upon its total assets as shown by the statement to the superintendent of banks on the last call report of the preceding year, according to the following rates:

The minimum fee for the examination of any bank, trust company or investment company shall be the sum of three hundred dollars (\$300);

For the first five million dollars (\$5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars (\$1,000) of assets shall be made;

For the second five million dollars (\$5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of ten million dollars (\$10,000,000) but not exceeding twenty million dollars (\$20,000,000), a charge of five cents (5¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of twenty million dollars (\$20,000,000) but not exceeding thirty million dollars (\$30,000,000), a charge of three cents (3¢) for each one thousand dollars (\$1,000) of assets shall be made;

For all assets in excess of thirty million dollars (\$30,000,000), a charge of two cents (2¢) for each one thousand dollars (\$1,000) of assets shall be made.

**History:** En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959.

**Repealing Clause**

Section 2 of Ch. 141, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

**5-909. (6014.83) Payments by building and loan associations.** For the credit of said fund, each building and loan association under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July each year, a fee based upon the total assets of such association as shown by its last annual statement and upon the following rates:

The minimum fee to be paid by any building and loan association shall be the sum of one hundred dollars (\$100);

For the first five million dollars (\$5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars (\$1,000) of assets shall be made;

For the second five million dollars (\$5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of ten million dollars (\$10,000,000) but not exceeding twenty million dollars (\$20,000,000), a charge of five cents (5¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of twenty million dollars (\$20,000,000) but not exceeding thirty million dollars (\$30,000,000), a charge of three cents (3¢) for each one thousand dollars (\$1,000) of assets shall be made;

For all assets in excess of thirty million dollars (\$30,000,000) a charge of two cents (2¢) for each one thousand dollars (\$1,000) of assets shall be made.



**History:** En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 114, L. 1959.

**Repealing Clause**

Section 2 of Ch. 114, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment completely revised the fees. For section prior to amendment see parent volume.

**5-910. (6014.84) Special examinations and fees.** Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association, credit union or any other office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description, when in the judgment of the state examiner it shall be deemed necessary, and such special examinations shall be charged for at the rate of sixty dollars (\$60.00) a day for each person engaged in the examination. All special examination fees or charges so collected by the state examiner and ex officio superintendent of banks and paid to the state treasurer, shall be placed in a special fund to be known as the special examination fund to be drawn upon by the state examiner and ex officio superintendent of banks to defray the actual costs and expenses of such special examinations, but all moneys remaining in such special fund at the end of each current year shall be transferred by the state treasurer to the general fund.

In any case where the current examination shall not have been made prior to the first day of July of any year, the above fees must be paid as herein specified, provided, however, that all examinations shall cover the entire period from the date of the last examination.

**History:** En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959.

the necessary transportation expenses and per diem at the rate currently in effect for all state and county employees."

**Amendment**

The 1959 amendment increased the fee per day from \$30 to \$60 and deleted a provision for expenses which read "plus

**Repealing Clause**

Section 2 of Ch. 180, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS

### 5-1051. Photographic or micro-film reproduction of bank records, etc.

**Checking Account Records**

In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, bank records of

decedent's checking account were properly admitted as evidence. *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042, 1044.

## TITLE 6—BONDS AND UNDERTAKINGS

### CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

#### 6-401. (5668.41) Contractors performing public work to furnish bond, etc.

##### **Estoppel of Surety**

This section did not prevent a surety on a bond given hereunder from becoming liable by estoppel to a third party who, in reliance on the surety's representations that he would be protected by the bond, paid off unpaid checks of the contractor and advanced money to the contractor for future payments, all in the nature of

claims covered by the bond. *Bower v. Tebbs*, 132 M 146, 314 P 2d 731.

##### **Provender, Materials or Supplies**

Equipment rental comes within the phrase "provender, materials or supplies" as used in a bond given under this section. *Bower v. Tebbs*, 132 M 146, 314 P 2d 731.



## TITLE 8—CARRIERS AND CARRIAGE

### CHAPTER 4—CARRIERS OF PERSONS, PROPERTY AND MESSAGES— DUTIES AND OBLIGATIONS

#### 8-405. (7815) General duties of carrier.

##### Application of Statute

Although this statute imposes upon the carrier the duty to exercise "the highest degree of care," it is but declaratory of

the common law and does not constitute the carrier an insurer of the passenger's safety. *Wilson v. Northland Greyhound Lines, Inc.*, 166 F Supp 667, 669.

## **TITLE 9—CEMETERIES**

### **CHAPTER 7—CORPORATIONS FOR OPERATION OF MAUSOLEUMS OR COLUMBARIUMS—POWERS**

#### **9-705. Powers to make rules and regulations.**

##### **Compiler's Note**

The reference in this section to sections  
9-606 to 9-614 should read sections 9-706  
to 9-714.

## TITLE 10—CHILDREN AND CHILD WELFARE

### Chapter 1. Children's center, 10-101.1.

#### 6. Juvenile courts and proceedings against juvenile delinquents, 10-617.

### CHAPTER 1—CHILDREN'S CENTER

#### Section 10-101.1. Change of name of home.

**10-101.1. Change of name of home.** Hereafter, the state orphan's home at Twin Bridges, Montana will be known and designated as "Montana Children's Center."

**History:** En. Sec. 1, Ch. 19, L. 1959.

#### **Title of Act**

An act to change the name of the state orphan's home at Twin Bridges, Montana, to "Montana Children's Center"; providing for a repealing clause.

#### **Repealing Clause**

Section 2 of Ch. 19, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN—PROCEEDINGS FOR PROTECTION

#### 10-501. (10465) Dependent and neglected children—definition.

##### **References**

Cited or applied in Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

#### 10-503. (10467) Application to courts with reference to dependent, etc.

##### **Residence of Petitioner**

Since the court's jurisdiction had to be determined as of the time a proceeding was commenced, the issue of the petitioner's residence did not become moot even though the petitioner had established the necessary residence since the hearing in the proceeding. State v. District Court, 131 M 502, 312 P 2d 119, 123.

The word "resident" as used in this section must denote one actually domiciled within the county and in a proceeding to have a child declared dependent and ne-

glected, where the petitioner was not a resident of the county where the child resided, the court was without jurisdiction to proceed. State v. District Court, 131 M 502, 312 P 2d 119, 122, 123.

Where petitioner was not domiciled, and thus not a resident of the county where the child resided, the court was without power to attempt to confer jurisdiction by an amendment to conform to the alleged proof that petitioner was domiciled in such county. State v. District Court, 131 M 502, 312 P 2d 119, 123.

#### 10-504. (10468) Citation and procedure.

##### **References**

Cited or applied in State v. District Court, 131 M 502, 312 P 2d 119, 121.

#### 10-505. State department of public welfare successor to bureau, etc.

##### **References**

Cited or applied in State v. District Court, 131 M 502, 312 P 2d 119, 121.

## CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

Section 10-617. Penalty for improper and negligent training of children.

## 10-601. Construction and purpose of the act.

**Repeal of Conflicting Laws**

By the enactment of chapter 227, Laws of 1943, and its amendments covering juveniles and creating juvenile courts, the legislature intended to repeal all prior laws in conflict therewith, and amended the general criminal code insofar as it conflicts with the statutes relating to

juveniles. State ex rel. Dahl v. District Court, — M —, 333 P 2d 495, 499.

**References**

Cited or applied in Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

## 10-602. Definitions.

**References**

Cited in State ex rel. Dahl v. District Court, — M —, 333 P 2d 495, 497.

## 10-603. Jurisdiction.

**Right to Trial by Jury**

Where a minor, charged with being a delinquent, made a demand for a jury trial on the day preceding the trial and at the opening of the trial, the court was without jurisdiction to try him without a jury. Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

A child under the age of 16 years may never be tried for a law violation in the district court. He is solely under the exclusive jurisdiction of the juvenile court. State ex rel. Dahl v. District Court, — M —, 333 P 2d 495, 498, 499.

## 10-604. Jury.

**References**

Cited or applied in Application of Banschbach, 133 M 312, 323 P 2d 1112, 1115.

## 10-610. Transfer from other courts.

**Criminal Information**

District criminal court has no jurisdiction to authorize or order the filing of a criminal information against a juvenile child of the age of 15 years and less than

16 years of age, nor to try such child in the district court. State ex rel. Dahl v. District Court, — M —, 333 P 2d 495, 497.

10-617. Penalty for improper and negligent training of children. Any parent or parents, legal guardian, or any other person who shall encourage, wilfully cause or contribute to, or through negligence in the care, custody, guidance, education, maintenance, or direction of any child under eighteen years of age, cause or permit such child to violate any law of this state, or the ordinance or ordinances of any city of this state, or to be or become incorrigible, or to knowingly associate with thieves, vicious or immoral persons; or to grow up in idleness or crime, or to knowingly enter a house of prostitution; or to knowingly visit or patronize any place, house, or apartment building where any gambling device is or gambling devices are or shall be operated or run, or where any gambling is done or conducted, or to patronize or visit any saloon or saloons, or dram shop or dram shops, where intoxicating liquors are sold, or to wander about the streets of any town or city in the nighttime, without being on lawful business or occupation, or to habitually wander about or visit any railroads

or tracks, or to jump or hook on to any moving train or to enter any car or engines, without lawful authority; to use habitually any vile, obscene, vulgar, profane, or indecent language, or to be guilty of immoral conduct in any public place, or about any schoolhouse or grounds, or keep or permit it in or about any saloon or place where spirituous liquors or intoxicating liquors are sold, or in any gambling house or place where gambling is practiced, or in a house of ill fame or prostitution; or to become addicted to the use of spirituous and intoxicating liquors not for medicinal purposes prescribed by a physician; shall be guilty of a misdemeanor and upon trial and conviction thereof shall be fined in a sum not less than ten dollars (\$10.00) and not to exceed one thousand dollars (\$1,000.00), or imprisonment in the county jail for a period not exceeding nine (9) months, or by both such fine and imprisonment.

**History:** En. Sec. 16, Ch. 227, L. 1943;  
amd. Sec. 1, Ch. 22, L. 1959.

#### **Amendment**

The 1959 amendment inserted the word "any" after the words "legal guardian, or" near the beginning of this section; deleted the words "or to patronize or visit any public poolroom or poolrooms, or

bucketshop" which appeared after the words "where intoxicating liquors are sold"; made the word "railroad" plural, and deleted the word "yards" which had appeared after the word "railroad."

#### **Repealing Clause**

Section 2 of Ch. 22, Laws 1959 repealed all acts and parts of acts in conflict therewith.



## TITLE 11—CITIES AND TOWNS

- Chapter 4. Additions of platted tracts to cities and towns, 11-403.
9. Powers of city and town councils, 11-966.
  12. Contracts and franchises, 11-1202.
  18. Police department, metropolitan police law, 11-1804.1, 11-1806, 11-1814, 11-1823.
  19. Fire department—firemen's disability and pension fund, 11-1912, 11-1918, 11-1919.
  20. Fire protection in unincorporated towns—fire wardens, companies and districts, 11-2008, 11-2010, 11-2030.
  22. Special improvement districts, 11-2204, 11-2231.
  23. Municipal bonds and indebtedness, 11-2310, 11-2316.
  24. Municipal revenue bond act of 1939, 11-2402.
  27. Building regulations—zoning commission, 11-2710.
  38. City or city-county planning boards, 11-3804, 11-3812, 11-3830, 11-3842, 11-3852, 11-3853, 11-3854.
  39. Urban renewal law, 11-3901 to 11-3920.

### CHAPTER 1—GENERAL POWERS OF CITIES AND TOWNS

#### 11-104. (4958) City or town, how named, general corporate powers.

##### Tax Sales

County acquiring tax deeds to lots, advertised them for sale but received no offer. Purchase of lots by city being authorized by city council because of hous-

ing and sanitary conditions, it had the right to sell them at varying prices, much higher than purchase price paid to county. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 501, 502.

### CHAPTER 2—CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

#### 11-201. (4959) Cities and towns classified.

##### References

Cited in *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

### CHAPTER 4—ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

Section 11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.

**11-403. (4978) Extension of boundaries to include contiguous platted tracts or other parcels of land.** (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city and the in-

habitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders, if any, of the territory proposed to be embraced.

Provided also, that cities of the first class may include as part of such city any platted or unplatted tract or parcel of land that is wholly surrounded by such city upon passing a resolution advertising and upon passing a further resolution or following such advertising, all in the manner aforesaid, and such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders, if any, of the land to be annexed object; provided, however, that land used for agricultural, mining, smelting, refining, transportation, recreational area, or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto, shall not be annexed under this provision.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of

land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision (2) hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959.

#### **Amendment**

The 1959 amendment in subd. (1) deleted the phrase "and the inhabitants thereof" which appeared after the words "best interests of such city"; added the second paragraph of subd. (1), and changed the word "caused" to "cause" which appeared after the words "proposed to be embraced, and" in subd. (2).

#### **Repealing Clause**

Section 2 of Ch. 238, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 238, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

#### **Appeal**

In taxpayers' suit opposing annexation of a city subdivision where trial court found that less than the required majority had protested, it must be presumed on appeal that the lower court's proceedings are regular and contain no substantial error until otherwise shown preponderantly by the plaintiff. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

#### **Disapproval by Residents**

Residents of an area sought to be annexed must register their disapproval by showing such disapproval in writing to the city clerk as required by statute. They cannot do so in courts of law. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Time limitation for disapproval cannot be extended. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092, 1093.

#### **Discretion of City Council**

City council has the discretion to determine whether or not it is in the best interests of the city and the inhabitants of the area that it be annexed. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

#### **Evidence of Benefits**

In action for injunctive relief against resolution of intention of city council to annex land court properly excluded all evidence relating to benefits. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

#### **Resident Freeholder**

A freeholder becomes a resident under section 83-303 upon union of act and intent. If the intention to establish a permanent residence be ascertained, the recency of the establishment is immaterial. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

A resident freeholder qualified to protest annexation may be defined as one who is a resident within the area to be annexed, holding a present legal title to a freehold estate in real property located



within the area to be annexed. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

Date through which timely protest could be received, set forth in the notice of resolution of intention to annex, as protest date, determines qualifications of resident freeholders to protest annexation. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

It is not necessary for resident freeholder to reside upon his freehold in order

to protest annexation. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

#### **Resolution of Intention**

Exercise of discretion of city council in passing resolution of intention to annex land may be reviewed by court only when, and if, they have proceeded contrary to statute. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

### **11-404. Land when deemed contiguous.**

#### **Operation and Effect**

Triangle piece of unplatted land separated area sought to be annexed into two tracts of land. Although the triangular strip was a part of a much larger tract, that fact was immaterial. The only part of the land which was significant was the strip separating the area sought to be an-

nexed, not the larger area of which the separating strip was a part. If the triangular separating strip is too small or too narrow to be platted, then the tracts separated by it will be deemed contiguous. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1093.

## **CHAPTER 7—OFFICERS AND ELECTIONS**

### **11-702. (4996) Officers of city of second and third classes.**

#### **Commissioner of Public Works**

Commissioner of public works, appointed by the mayor, being a public officer of the city, was under a duty to account

for all funds which might come into his hands as such officer, including funds of public housing projects. *Roundup v. Liebetrau*, — M —, 327 P 2d 810, 816.

## **CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS**

Section 11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.

11-966. (5039.63) Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances. The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes, said words "value of the



taxable property" being used herein in the same sense as in section 6 of article XIII of the Constitution; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) to (4). \* \* \* [Subdivisions (2) to (4), same as parent volume.]

**History:** En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959. See also history of Sec. 11-901.

#### Amendment

The 1959 amendment in subd. (1) added the phrase "sewage treatment and dis-

posal plants" preceding the word "bridges" and the phrase "sewage and disposal plant" following the words "water supply."

#### Repealing Clause

Section 2 of Ch. 38, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 12—CONTRACTS AND FRANCHISES

Section. 11-1202. Awarding contracts—advertisement—limitations—installments—sales of supplies—purchases from government agencies—~~exemptions~~.

**11-1202. (5070) Awarding contracts—advertisement—limitations—installments—sales of supplies—purchases from government agencies—exemptions.** All contracts for work, or for supplies, or for material, for which must be paid a sum exceeding one thousand dollars (\$1,000.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three (3) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot

or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ( $\frac{3}{4}$ ) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed one thousand dollars (\$1,000.00) the council may provide for the payment of such amount in installments extending over a period of not more than three (3) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ( $\frac{1}{3}$ ) thereof shall be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

**History:** En. Sec. 1, Ch. 48, L. 1907; re-en. Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959.

#### **Amendment**

The 1959 amendment, in the first paragraph, substituted the phrase "once each week for two consecutive weeks and the second publication shall be made not less

than five (5) days nor more than twelve (12) days" for the phrase "twice, the first publication to be made not more than twenty-two (22) days nor less than fifteen (15) days before the consideration of bids and the second publication shall be made not less than five (5) days nor more than ten (10) days."

#### **Repealing Clause**

Section 2 of Ch. 220, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS—  
CITY WARRANTS

## 11-1305. (5080) Defective highways and public works—notice, etc.

**Notice to City of Defective Condition**

In an action by a pedestrian against a municipality for injuries sustained in a fall on a sidewalk, a telephone conversation by the owner of a business adjacent to the site of the fall, to the city engineer's office to the effect that he reported a defect in the walk to the person who answered the phone, was admissible and the absence of proof that the city clerk made a record of the report did not deny the right of the pedestrian, having carried the burden of proof, to recover damages. *Ratliff v. City of Great Falls*, 132 M 89, 314 P 2d 880.

Notice to the city may be proved "by any method through competent evidence." *Ratliff v. City of Great Falls*, 132 M 89, 314 P 2d 880, 883.

**Operation and Effect**

A cause of action for damage to property allegedly caused by the insufficiency of a storm sewer to handle water from a heavy rain was barred by the failure to give notice to the city within 60 days. *Thompson v. City of Shelby*, — M —, 323 P 2d 33.

**Purpose**

The purpose of this section is to give knowledge of the injury to the city authorities so that the expense of litigation may be avoided, not alone that the city may have an opportunity to investigate, and it is not sufficient that city officers had notice of the defect. *Thompson v. City of Shelby*, — M —, 323 P 2d 33, 34.

**References**

Cited in *Big Head v. United States*, 166 F Supp 510, 515.

## CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

- Section 11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen.  
 11-1806. Presentation and trial of charges against policemen.  
 11-1814. Qualifications of policemen.  
 11-1823. Fund for payment of officers on reserve lists—tax levy.

## 11-1801. (5095) Police department.

**Liability of City for Tortious Act of City Policeman**

A city is not liable for tortious acts of a city policeman committed while acting within the course and scope of his employment in enforcing the laws and ordinances of a city. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876, 878.

**Operation and Effect**

A municipality has the duty to maintain an adequate police force and, it follows, the duty to preserve order, and in performing that duty the municipality is performing a governmental function. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876, 879.

11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen. It is hereby made the duty of the mayor of any city of the third class which does not have a police commission, upon the written request of any policeman who has been employed by said city as such for a period of ten years or more, to appoint a police commission in accordance with the provisions of section 11-1804, Revised Codes of Montana, 1947, which commission shall then proceed under the provisions of section 11-1806, Revised Codes of Montana, 1947, before such policeman can be discharged or terminated from his employment as a policeman.

**History:** En. Sec. 1, Ch. 199, L. 1959.

**Title of Act**

An act to make it the duty of the mayor of any city of the third class which does

not have the police commission, upon the written request of a policeman employed by the city as such for ten years or more to appoint a police commission in accordance with section 11-1804, Revised Codes



of Montana, 1947; providing for procedure as set forth in section 11-1806, Revised Codes of Montana, 1947; providing for an effective date; and repealing all acts and parts of acts in conflict herewith.

#### Repealing Clause

Section 2 of Ch. 199, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 199, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

### 11-1806. (5100) Presentation and trial of charges against policemen.

(1) to (9). \* \* \* [Subdivisions (1) to (9), same as parent volume.]

(10) The mayor or chief of police, subject to the approval of the mayor, shall have the power in all cases, to suspend a policeman, or any officer, for a period of not exceeding ten (10) days in any one (1) month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department. The mayor of any city shall have the power and authority at any time when he deems it expedient to employ not to exceed two (2) persons at one time for a period not to exceed thirty (30) days to do police duty who are not members of the police department.

(11). \* \* \* [Same as parent volume.]

History: En. Sec. 6, Ch. 136, L. 1907; re-en. Sec. 3309, Rev. C. 1907; re-en. R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1923; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959.

#### Amendment

The 1959 amendment in subd. (10) substituted the words "such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of

the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department" following the words "in any one (1) month," for the words "without any hearing or trial, such suspension to be with or without pay as the order of suspension may determine."

#### Repealing Clause

Section 2 of Ch. 28, Laws 1959, repealed all acts and parts of acts in conflict therewith.

11-1814. (5106) **Qualifications of policemen.** The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty-one years of age nor more than forty years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

In every case a police officer must be a citizen of the United States, must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply



to every officer on the eligible list, at the time he shall be transferred to the active list.

Every police officer must be able to speak and write understandingly the English language.

**History:** En. Sec. 12, Ch. 136, L. 1907; re-en. Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959.

#### Amendment

The 1959 amendment in the first paragraph deleted the words "but this restriction shall not apply to any member of any present police department," which appeared after the words "forty years of age," and in the second paragraph sub-

stituted the words "must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months" for the words "and have been a resident of the city or town in which he is appointed at least two years."

#### Repealing Clause

Section 2 of Ch. 29, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**11-1823. (5108.7) Fund for payment of officers on reserve lists—tax levy.** For the purpose of paying the salaries of policemen who have been placed upon the reserve list of the cities of the first and second class, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund created for the payment of such salaries of police officers upon the reserve list.

However, in case the demand against such fund shall be heavier than said levy can provide, then and in such case such additional levy of not to exceed two (2) mills may be made until such returns from the first mill levy be sufficient to meet the demand.

**History:** En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959.

#### Repealing Clause

Section 2 of Ch. 8, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1959 Amendment, in the second paragraph raised the additional levy authorized from one mill to two mills.

**11-1832. (5108.16) Minimum wage of police in first and second class cities.**

#### Annual Increase

Although the wages provided for by the 1957 amendment are payable only after July 1, 1957, this does not mean that the legislature did not intend to consider service prior to that date in computing what the wages shall be. *Hill v. Billings*, — M —, 328 P 2d 1112, 1115.

In enacting Laws of 1957, chapter 28, amending this section, the legislature intended to recognize the status of police officers according to the length of service in the past and to reward the more ex-

perienced by paying them a higher wage scale. The legislature drew no distinction between years of service performed before July 1, 1957, and those performed after that date. *Hill v. Billings*, — M —, 328 P 2d 1112, 1116.

Under this section as amended by Laws of 1957, chapter 28, added wages must be added to the actual current salary and not to the minimum of \$350 a month. *Hill v. Billings*, — M —, 328 P 2d 1112, 1115.

## CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

Section 11-1912.	Tax levy for fund.
11-1918.	Reports of insurers.
11-1919.	State auditor to pay fire department relief association premium tax collected from certain insurers.

**11-1912. (5119) Tax levy for fund.** For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to one per centum (1%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as herein below set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. Whenever the total amount of a fire department relief association's fund is less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the special tax levy shall be two (2) mills on each dollar of taxable valuation of all property assessed for taxes within the limits of the said city, town or municipality; provided however, if the assessment of a two (2) mill tax levy in any one year will create a revenue as will cause said fire department relief association's disability and pension fund to exceed one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality, then, in that event, and not otherwise, the mill tax levy shall be such fractional part of two (2) mills as will produce a sufficient amount of revenue as will bring the total amount of the said fire department relief association's disability and pension fund to an amount equal to one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality.

2. In cities of the third class, when the fire department relief association's disability and pension fund contains an amount of less than two per centum (2%) of all taxable property within the city limits of the city, town or municipality, the city council may levy an annual special tax not to exceed two (2) mills on the dollar of all taxable valuation of all taxable property assessed within the said city, town or municipality.

**History:** En. Sec. 3, Ch. 71, L. 1907; re-en. Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959.

**Amendment**

The 1959 amendment in subd. 1 deleted the words "greater than one-half of one per centum ( $\frac{1}{2}$  of 1%) and" which appeared after the words "association's fund is"; substituted "two (2) mills" for "one (1) mill" each time it appears; deleted

former subd. 2, for text of which see parent volume, and renumbered old subd. 3 as subd. 2.

#### Repealing Clause

Section 2 of Ch. 107, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**11-1918. (5126) Reports of insurers.** The commissioner of insurance shall furnish to each insurer authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919 for its annual statement, a list of all such incorporated cities or towns, and each insurer shall report therein the amount of the fire portion of the direct premiums, after deducting cancellations and return premiums, received by it during the preceding year in each incorporated city or town. Before July 1 following the said October 31, mentioned in preceding sections, the commissioner of insurance shall certify to the state auditor the name of each city or town which has an organized fire department and fire department relief association which has complied with provisions of section 11-1910, which has been so reported to him and the amount of the fire portion of the direct premiums after deducting cancellations and return premiums, received in each such city or town in such year by each insurer authorized to effect insurance on risks enumerated in subsection 2 of section 11-1919.

**History:** En. Sec. 2, Ch. 129, L. 1911; re-en. Sec. 5126, R. C. M. 1921; amd. Sec. 8, Ch. 58, L. 1927; amd. Sec. 1, Ch. 126, L. 1947; amd. Sec. 1, Ch. 22, L. 1955; amd. Sec. 1, Ch. 184, L. 1959.

#### Amendment

The 1959 amendment substituted the word "insurer" for the words "insurance company" each time they appear and substituted the reference "subsection 2 of section 11-1919" for the reference "paragraph

1 of section 40-1409" each time it appeared.

#### Repealing Clause

Section 2 of Ch. 184, Laws 1959, repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 184, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

**11-1919. (5127) State auditor to pay fire department relief association premium tax collected from certain insurers.** 1. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon premiums collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section all of the taxes on premiums assessed and collected on all premiums collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and dis-



tributed pursuant to subdivision (a) above is insufficient to make an amount equal to \$100.00 shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of \$100.00.

2. The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle.

**History:** En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915, re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959.

#### **Amendment**

The 1959 amendment made numerous changes in this section and added subsection 2. For section prior to amendment see parent volume.

#### **Repealing Clause**

Section 2 of Ch. 183, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 183, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

## **CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS, COMPANIES AND DISTRICTS**

- Section 11-2008. Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.  
 11-2010. Trustees of fire districts—appointment—powers.  
 11-2030. Fire insurance premium tax to be paid into fund.

**11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.** (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by causing notices of the time and place of such hearing to be posted in at least three (3) of



the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between the fire district and the city, town or private fire service shall be that of an independent contractor.

(b) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of fifty per cent (50%) or more of the area included within such fire district and who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (a) above shall apply to such requests for dissolution of fire districts.

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original district shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area included within

the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d) Change of boundaries—annexation. Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the adjacent area proposed to be annexed, and who constitute a majority of the taxpaying freeholders within such proposed area to be annexed, whose names appear upon the last completed assessment roll, shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition, in accordance with the procedure outlined in subsection (c) above: and shall allow the annexation of such proposed adjacent territory, unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area included within the original district, and who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

**History:** En. Sec. 3237, Pol. C. 1895; 1921; re-en. Sec. 5148, R. C. M. 1921; amd. re-en. Sec. 2081, Rev. C. 1907; amd. Sec. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947;

amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959.

#### Compiler's Note

This section was amended twice in 1959. Once by Ch. 48, approved February 26, 1959 and once by Ch. 77, approved March 2, 1959. Neither act contained a specific effective date and neither act mentioned the amendment by the other act. The acts amended this section in different respects and do not seem in conflict with each other. Hence, the compiler has set out this section incorporating the changes made by each chapter.

#### Amendments

The 1959 amendment by Ch. 48 substituted the word "adjacent" for "contiguous" wherever it appears in subd. (d) and the last paragraph and substituted "either district" for "both districts" each time it appears in the last paragraph.

The 1959 amendment by Ch. 77 in subd. (a) substituted the word "or" for "and" which appeared between the words "buying" and "maintaining"; inserted the words "or private fire service" in two

places in the next to last sentence of subd. (a); substituted the words "for the purpose of furnishing" for "for the extension of" before the words "fire protection service" in the same sentence and added the last sentence to subd. (a).

#### Severability Clause

Section 2 of Ch. 48, Laws 1959 read: "If any provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this act."

#### Repealing Clause

Section 3 of Ch. 48, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Constitutionality

This section, before the 1957 amendment, was unconstitutional as being in direct conflict with the due process of law clause in section 27, article III, Montana Constitution and the first clause of the fourteenth amendment to the Constitution of the United States of America. *Great Northern Railway Co. v. Roosevelt County*, — M —, 332 P 2d 501, 502, 505, 506.

### 11-2009. (5148.1) Unconstitutional.

#### Compiler's Note

This section (Sec. 1, Ch. 148, L. 1925) was held unconstitutional in the case of *Great Northern Railway Co. v. Roosevelt County*, — M —, 332 P 2d 501.

#### Unconstitutional

This section is unconstitutional as a denial of due process in conflict with section 27, article III, Montana Constitution and the first clause of the fourteenth amendment to the Constitution of the United States of America. *Great Northern Railway Co. v. Roosevelt County*, — M —, 332 P 2d 501, 502, 505, 506.

### 11-2010. (5149) Trustees of fire districts — appointment — powers.

(a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable by-laws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies.



The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five (5) miles of the farthest limits of the district, whether such city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by such city or town, or by such other fire district, to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by or for such cities or towns lying within the district, or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district.

**History:** En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 77, approved March 2, 1959 and once by Ch. 118, approved March 4, 1959. Neither act mentioned the amendment by the other act but as they amended the section in different respects they do not seem in conflict with each other. Hence, the compiler has made a composite section incorporating the changes made by each amendment.

#### Amendments

The 1959 amendment by Ch. 77 inserted the words "may contract with a city, town or private fire company to furnish fire protection for property with said district, or" in subd. (a).

The 1959 amendment by Ch. 118 in subd. (c) inserted the words "or with the trustees of any other fire district established in any unincorporated territory, town or village"; inserted the words "whether such city or town or other fire district shall lie within the same county or another county"; inserted the words "or by such other fire district" and added the words "or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district."

#### Repealing Clauses

Section 3 of Ch. 77, Laws 1959 and Sec. 2 of Ch. 118, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**11-2030. (5158.11) Fire insurance premium tax to be paid into fund.** The state auditor and ex-officio commissioner of insurance of the state of Montana shall annually deposit in the "Volunteer Fireman's Compensation Fund," herein created, such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted.

**History:** En. Sec. 11, Ch. 65, L. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959.

#### Amendment

The 1959 amendment substituted the word "insurers" for "insurance companies" and the reference to "subsection 2 of section 11-1919" for a reference to



"paragraph 1 of section 40-1409 pursuant to section 40-1302."

#### Repealing Clause

Section 2 of Ch. 164, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 164, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

## CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

Section 11-2204. Resolution of intention—notice—materials.  
11-2231. Form of bonds and warrants.

### 11-2201. (5225) Special improvements—powers of city council.

#### Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the con-

tracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

### 11-2202. (5226) Special improvement districts—placing wires, etc.

#### References

Cited or applied in *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061.

### 11-2204. (5227) Resolution of intention—notice—materials.

(1). \* \* \* [Same as parent volume.]

(2) Upon having passed such resolution the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such district; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights-of-way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

(3) and (4). \* \* \* [Subdivisions (3) and (4), same as parent volume.]

**History:** En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R. C. M. 1921; amd. Sec. 1, Ch. 261, L. 1959.

#### Amendment

The 1959 amendment in subd. (2) inserted the word "real" before the word "property" and inserted the words "listed

in his name upon the last completed assessment roll for state, county and school district taxes."

#### Repealing Clause

Section 2 of Ch. 261, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Construction of Section

The words "approximate estimate" should not be construed liberally. *Koich v. Helena*, 132 M 194, 315 P 2d 811, 814, 815.

#### Notice

Until there is service of notice in strict compliance with the statute, no jurisdiction would attach to the municipality. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

Notice of the resolution of intention given by city to landowners was not sufficient where it did not contain an "approximate estimate" of the cost of improvements, the original estimate having been increased by 7½%. *Koich v. Helena*, 132 M 194, 315 P 2d 811, 816.

The landowner whose property is affected by the special improvement district must be given notice of the intention of the city's intent to create one. The notice must be sufficiently definite to apprise the landowner of the extent, nature and cost of the various improvements proposed.

*Koich v. Helena*, 132 M 194, 315 P 2d 811, 814.

#### Operation and Effect

A special improvement district for the purpose of raising funds was void where one of the property owners affected was not mailed a notice. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

#### Public Hearing

The statute contemplates a public hearing where the various objections made to the resolution of intention may be aired before actual work on the project has commenced. *Koich v. Helena*, 132 M 194, 315 P 2d 811, 813.

#### Purpose of Resolution

Notification is the prime purpose of the statute so that taxpayers will not be burdened with some improvement which they do not want, cannot afford, or do not need. *Koich v. Helena*, 132 M 194, 315 P 2d 811, 813.

The essential purpose of a resolution of intention is to: (1) apprise the taxpayers that the city intends to propose a special improvement district; (2) what area will be encompassed in the district; (3) what type and character of improvements will be included within the district; and (4) the cost of the improvements to be made. *Koich v. Helena*, 132 M 194, 315 P 2d 811, 813.

### 11-2206. (5229) Protests against proposed work.

#### References

Cited or applied in *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061.

### 11-2207. (5230) Jurisdiction to order proposed improvements.

#### References

Cited in *Koich v. Helena*, 132 M 194, 315 P 2d 811, 812.

### 11-2209. (5232) Bid for work and award of contract.

#### References

Cited in *Koich v. Helena*, 132 M 194, 315 P 2d 811, 812.

### 11-2214. (5238) Methods of payments of improvements.

#### Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the con-

tracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

### 11-2228. (5246) Costs and expenses considered as cost of improvements.

#### References

Cited in *Koich v. Helena*, 132 M 194, 315 P 2d 811, 812.

**11-2231. (5249) Form of bonds and warrants.** All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. \_\_\_\_\_  
 United States of America,  
 State of Montana

Warrant or \_\_\_\_\_ Dollars  
 (Bond No. \_\_\_\_\_) \$ \_\_\_\_\_  
 Interest at the rate of \_\_\_\_\_ per cent per annum, payable annually. Special improvement district coupon warrant or bond \_\_\_\_\_, Montana  
 Issued by the city of \_\_\_\_\_, Montana.

The treasurer of the city of \_\_\_\_\_, Montana, will pay to bearer, the sum of \_\_\_\_\_ dollars as authorized by resolution No. \_\_\_\_\_ as passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, creating special improvement district No. \_\_\_\_\_ for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of \_\_\_\_\_, Montana.

This warrant (or bond) bears interest at the rate of \_\_\_\_\_ per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of \_\_\_\_\_ in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the city of \_\_\_\_\_, Montana relating to the issuance thereof.

(seal)

Dated at \_\_\_\_\_, Montana, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

City of \_\_\_\_\_, Montana.

By: \_\_\_\_\_, Mayor  
 \_\_\_\_\_, City Clerk

Registered at the office of the city treasurer of \_\_\_\_\_, Montana,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
City Treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at a rate not exceeding six (6%) per cent per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

**History:** En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959.

#### **Amendment**

The 1959 amendment, in the last paragraph, in the second sentence, substituted the words "bear the signatures of" for "be

signed by the mayor and clerk" and deleted a proviso from the third sentence in that paragraph which read "provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council."

#### **References**

Cited in *Koich v. Helena*, 132 M 194, 315 P 2d 811, 812.

### **11-2232. (5250) Payments under contracts.**

#### **References**

Cited in *Koich v. Helena*, 132 M 194, 315 P 2d 811, 812.



## CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

Section 11-2310. Who are entitled to vote—registration of electors.  
11-2316. Form and execution of bonds.

**11-2310. (5278.10) Who are entitled to vote—registration of electors.**

Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are taxpayers upon property therein and whose names appear on the last completed assessment role for state, county and school district taxes and who are entitled to vote at such election and shall prepare precinct registers for such election as provided in section 23-515 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

**History:** En. Sec. 10, Ch. 160, L. 1931;  
amd. Sec. 1, Ch. 182, L. 1939; amd. Sec.  
17, Ch. 64, L. 1959.

**Amendment**

The 1959 amendment, in the second paragraph, substituted the words "precinct registers" for the words "poll books."

**11-2316. (5278.16) Form and execution of bonds.** At the time of the sale of the bonds, or at a meeting held thereafter, the city or town council shall prescribe the form of the bonds whether amortization or serial bonds, and of the coupons to be attached thereto. Each and every bond and every coupon attached thereto must be signed by the mayor of the city or town, by the treasurer thereof, and must be attested by the city or town clerk, and each bond shall have the city or town seal affixed thereto.

**History:** En. Sec. 16, Ch. 160, L. 1931;  
amd. Sec. 6, Ch. 260, L. 1959.

**Amendment**

The 1959 amendment deleted a proviso from the end of this section which authorized facsimiles of the signatures of the officers required to sign the coupons.

## CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section 11-2402. Definitions.

**11-2402. Definitions.** Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building; or other revenue producing facilities and services authorized in these codes for cities and towns.

(b) The term "municipality" shall include any city or any town, however organized.

(c) The term "governing" body shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

**History:** En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959.

facilities and services authorized in these codes for cities and towns."

#### **Amendment**

The 1959 amendment in subd. (a) added the words "or other revenue producing

#### **Repealing Clause**

Section 2 of Ch. 111, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### **CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION**

Section 11-2710. Exercise of powers by county commissioners—when.

**11-2710. Exercise of powers by county commissioners—when.** Where a board of county commissioners is represented upon a city-county planning board formed under sections 11-3801 through 11-3858, Revised Codes of Montana, 1947, all the powers relating to zoning granted to cities in the preceding sections 11-2701 through 11-2709 may be assumed by the aforesaid board of county commissioners as relating to lands in the jurisdictional area and outside the corporate limits of any city or town.

**History:** En. 11-2710 by Sec. 1, Ch. 171, L. 1959.

and zoning regulatory powers; containing a repealing clause.

#### **Title of Act**

An act providing for a section to be known as section 11-2710 and authorizing county commissioners to exercise building

#### **Repealing Clause**

Section 2 of Ch. 171, Laws 1959 repealed all acts or parts of acts in conflict therewith.

### **CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS**

Section 11-3804. City planning board.

11-3812. Citizen members of city-county board—qualifications.

11-3830. Master plan—limits.

11-3842. Plats of subdivisions—approval by planning board.

11-3852. City and county powers regarding building and zoning regulations.

11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources.

11-3854. Exercise of zoning commission powers and duties.

**11-3804. City planning board.** A city planning board shall consist of not less than seven (7) members to be appointed as follows:

a. One (1) member to be appointed by the city council from its membership;

b. One (1) member to be appointed by the city council who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

c. One (1) member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

d. Four (4) citizen members to be appointed by the mayor, two (2) of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this act and two (2) of whom shall be resident freeholders within the city limits. Such citizen members shall hold no other office in the city government.

**History:** En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959.

resident freeholders within the urban area" for "members of which shall be residents of the urban area"; added the clause pertaining to resident freeholders within the city; and added the final sentence.

#### **Amendment**

The 1959 amendment, in subd. d., substituted the words "of whom shall be

### **11-3809. Repealed.**

#### **Repeal**

This section (Sec. 9, Ch. 246, L. 1957), relating to the terms of citizen members

of the board, was repealed by Sec. 8, Ch. 271, Laws 1959.

**11-3812. Citizen members of city-county board—qualifications.** The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

**History:** En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959.

clerical error as it was set out as "11-3182." The reference should have read "11-3812."

#### **Compiler's Note**

The beginning of the amending section correctly identified this section as the one to be amended, however, in setting out the section as amended there was an obvious

#### **Amendment**

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

**11-3830. Master plan—limits.** The planning board shall prepare and adopt a master plan for the development of the city wherein it was created and such contiguous unincorporated area outside the city as, in the judgment of the planning board, bears reasonable relation to the development of the city. Before exercising any authority or jurisdiction over such unincorporated area, the planning board, after approval by the board of county commissioners, shall file in the office of the clerk and recorder a map or plat showing the boundaries of such unincorporated area. With the approval of the board of county commissioners, such boundaries may be revised from time to time by the planning board. Such revised boundaries shall be shown upon a map or plat which shall be filed as above provided. The area included in such map or plat shall constitute the area over which the planning board shall have jurisdiction.

In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map or plat showing the boundary lines so agreed upon and approved



shall be filed as a part of any master plan or plans, and thereafter shall fix the limit of territorial jurisdiction with respect to decisions, orders or other actions to be made or taken by the respective planning boards or the governing bodies of cities or counties involved under the authority of this act; provided, however, that in the case of counties not exceeding twenty thousand (20,000) in population, the jurisdictional limits of the city-county planning board shall not extend more than six (6) miles from the limits of any class of city or town, incorporated or unincorporated, within such county, and in counties exceeding twenty thousand (20,000) population said limits shall not extend beyond twelve (12) miles from the limits of any city or town, incorporated or unincorporated, within such county.

**History:** En. Sec. 30, Ch. 246, L. 1957;  
amd. Sec. 3, Ch. 271, L. 1959.

#### Amendment

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

### 11-3841. Repealed.

#### Repeal

This section (Sec. 41, Ch. 246, L. 1957), relating to the control over plats, was repealed by Sec. 8, Ch. 271, Laws 1959.

**11-3842. Plats of subdivisions—approval by planning board.** After a master plan and an ordinance, containing provisions for subdivision control and the approval of plats and re-plats, have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, a plat of a subdivision shall not be filed with the county clerk and recorder or the city or town clerk unless compliance with the master plan has first been approved and endorsed upon the plat by the planning board having jurisdiction over the area.

Nothing herein contained shall be interpreted to usurp the present powers of the city or county governments, but shall add an additional requirement before any plat may be filed of record or entitled to be recorded.

**History:** En. Sec. 42, Ch. 246, L. 1957;  
amd. Sec. 4, Ch. 271, L. 1959.

#### Amendment

The 1959 amendment substituted, at the end of the first paragraph, "compliance with the master plan has first been ap-

proved and endorsed upon the plat by the planning board having jurisdiction over the area" for "it has first been approved by the planning board having jurisdiction over the area as provided in section 11-3841 and section 11-3844"; and added the second paragraph.

### 11-3849. Repealed.

#### Repeal

This section (Sec. 49, Ch. 246, L. 1957), relating to the requirement of structures

conforming to the master plan and ordinance, was repealed by Sec. 8, Ch. 271, Laws 1959.

### 11-3850. Repealed.

#### Repeal

This section (Sec. 50, Ch. 246, L. 1957), relating to the issuance of improvement

location permits, was repealed by Sec. 8, Ch. 271, Laws 1959.

**11-3852. City and county powers regarding building and zoning regulations.** As an integral part of the planning of areas so that the object of



this legislation as set out in section 11-3801 may be further accomplished, any city council or board of county commissioners that is represented on a planning board created under the authority of this act may exercise all of the powers granted to said city council or board of county commissioners, respectively, by sections 11-2701 through 11-2710 over all lands within the territorial jurisdiction of the planning board, as such jurisdiction is set forth in section 11-3830.

**History:** En. Sec. 52, Ch. 246, L. 1957; amd. Sec. 5, Ch. 271, L. 1959.

**Amendment**

The 1959 amendment inserted the words "or board of county commissioners" the first time they appear and, in the latter part of the section, substituted "granted

to said city council or board of county commissioners, respectively, by sections 11-2701 through 11-2710 over all lands within the territorial jurisdiction of the planning board" for "heretofore granted by sections 11-2701 through 11-2709 over all lands within its territorial jurisdiction."

**11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources.** Nothing in this act shall be deemed to authorize an ordinance, resolution, rule, or regulation which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

**History:** En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959.

**Amendment**

The 1959 amendment substituted the word "resolution" for "law" and substituted the last part of the section, beginning with "development," for "develop-

ment, recovery, and sale of any mineral resources or forests by the owner thereof, or the construction of buildings, railroads, or other structures or equipment necessary to the full use, development, recovery, and sale of mineral or forest resources."

**11-3854. Exercise of zoning commission powers and duties.** Where a city council and/or board of county commissioners is represented on an existing planning board, the duties and powers of the "zoning commission" provided for in section 11-2706, Revised Codes of Montana, 1947, shall be performed by the planning board of which such city and/or board of county commissioners is a member.

**History:** En. Sec. 54, Ch. 246, L. 1957; amd. Sec. 7, Ch. 271, L. 1959.

**Amendment**

The 1959 amendment inserted "and/or board of county commissioners" in two places.

**Repealing Clause**

Section 8 of Ch. 271, Laws 1959 read "That sections 11-3809, 11-3841, 11-3849 and 11-3850, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

CHAPTER 39—URBAN RENEWAL LAW

- Section 11-3901. Definitions.
- 11-3902. Findings and declarations of necessity.
- 11-3903. Encouragement of private enterprise.
- 11-3904. Workable program.
- 11-3905. Finding of necessity by local governing body.
- 11-3906. Preparation and approval of urban renewal projects and urban renewal plans.
- 11-3907. Powers.
- 11-3908. Eminent domain.
- 11-3909. Disposal of property in urban renewal area.
- 11-3910. Issuance of bonds.
- 11-3911. Bonds as legal investments.
- 11-3912. Property exempt from taxes and from levy and sale by virtue of an execution.

- 11-3913. Cooperation by public bodies.
- 11-3914. Title of purchaser.
- 11-3915. Exercise of powers in carrying out urban renewal project.
- 11-3916. Urban renewal agency.
- 11-3917. Prohibition against discrimination.
- 11-3918. Interested public officials, commissioners, or employees.
- 11-3919. Separability—act controlling.
- 11-3920. Short title.

**11-3901. Definitions.** The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning clearly indicated by the context:

(a) "Agency" or "urban renewal agency" shall mean a public agency created by section 16 [11-3916] of this act.

(b) "Blighted area" shall mean an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age obsolescence of buildings or improvements, whether residential or non-residential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate or mixed uses of land or buildings; high density of population and overcrowding; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime; substantially impairs or arrests the sound growth of the city or its environs, retards the provision of housing accommodations or constitutes an economic or social liability, and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, and morals in its present condition and use.

(c) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(d) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(e) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(g) "Mayor" shall mean the chief executive of a city or town.

(h) "Municipality" shall mean any incorporated city or town in the state.

(i) "Obligee" shall include any bondholder, agent or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(j) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(k) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(l) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(m) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(n) "Redevelopment" may include (1) acquisition of a blighted area or portion thereof; (2) demolition and removal of buildings and improvements; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act in accordance with the urban renewal plan, and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(o) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof, in accordance with an urban renewal plan, by (1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act; and (4) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(p) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(q) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal



area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

**History:** En. Sec. 1, Ch. 195, L. 1959.

#### **Title of Act**

An act to provide for the rehabilitation, redevelopment, and clearance of blighted areas in cities and towns in this state in accordance with urban renewal plans approved by the governing bodies thereof; to define the duties, liabilities, exemptions and powers of such cities and towns in undertaking such activities, including the power to acquire property through the exercise of the power of eminent domain or otherwise; to dispose of property subject to any restrictions deemed necessary to prevent the development or spread of

future deteriorated or blighted areas, to issue revenue bonds and other obligations, to levy taxes and assessments and to enter into agreements to secure federal aid and comply with conditions imposed in connection therewith; to provide for an urban renewal agency and its powers hereunder if a city or town determines it to be in the public interest; to authorize public bodies to furnish funds, services, facilities and property in aid of urban renewal projects hereunder, and to provide that properties while held by a public agency hereunder shall be exempt from taxation.

**11-3902. Findings and declarations of necessity.** It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of rehabilitation in such a manner that the con-



ditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

**History:** En. Sec. 2, Ch. 195, L. 1959.

**11-3903. Encouragement of private enterprise.** A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this act, including the formulation of a workable program, the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

**History:** En. Sec. 3, Ch. 195, L. 1959.

**11-3904. Workable program.** A municipality for the purposes of this act may formulate a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of such areas, or to undertake such of the aforesaid activities, or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for; the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of blighted areas or portions thereof.

**History:** En. Sec. 4, Ch. 195, L. 1959.

**11-3905. Finding of necessity by local governing body.** No municipality shall exercise any of the powers hereafter conferred upon municipalities by this act until after its local governing body shall have adopted a resolution finding that: (1) one or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality; and (3) that the proposed urban renewal project has been approved by

the taxpayers of such municipality at an election as provided in section 6, subsection (g) [11-3906] thereof.

**History:** En. Sec. 5, Ch. 195, L. 1959.

**11-3906. Preparation and approval of urban renewal projects and urban renewal plans.** (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty (60) days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten (10) nor more than thirty (30) days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing not less than ten (10) days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project if it finds that (1) a workable and feasible plan

exists for making available adequate housing for the persons who may be displaced by the project; (2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole; (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (4) that a sound and adequate financial program exists for the financing of said project.

Provided, that the local governing body must find the urban renewal project area to be blighted area as defined in section 1 (b) [11-3901] hereof.

(e) An urban renewal project plan may be modified at any time by the local governing body: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert.

(f) Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

(g) Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting in such election.

**History: En. Sec. 6, Ch. 195, L. 1959.**

**11-3907. Powers.** Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act, and to disseminate blight clearance and urban renewal information.

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets or roads in connection with an urban renewal project; to install, construct, and reconstruct, streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(c) Within the municipality, to enter upon any building or property in any urban renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such manner as to cause the



least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(d) To invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 10 [11-3910] of this act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled.

(e) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act.

(f) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (1) a comprehensive plan or parts thereof for the locality as a whole, (2) urban renewal plans, (3) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (4) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (5) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of



urban blight and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

(g) To prepare plans for the relocation of families displaced from an urban renewal area, and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

(h) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and in accordance with state law; (1) levy taxes and assessments for such purposes; (2) acquire land by negotiation and/or eminent domain; (3) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (4) plan or replan, zone or rezone any part of the municipality; (5) adopt annual budgets for the operation of an urban renewal agency, department, or offices vested with urban renewal project powers under section 15 [11-3915] of this act; (6) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this act.

(i) Within the municipality, to organize, coordinate, and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(j) To exercise all or any part or combination of powers herein granted.

(k) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

**History: En. Sec. 7, Ch. 195, L. 1959.**

**11-3908. Eminent domain.** A municipality shall have the right to acquire by condemnation, any interest in real property, which it may deem necessary for an urban renewal project under this act after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this act.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to

condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof.

**History:** En. Sec. 8, Ch. 195, L. 1959.

**11-3909. Disposal of property in urban renewal area.** (a) A municipality may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, in an urban renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets, and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this act. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account, and give consideration to, the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite bids from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation bids and the financial and legal ability of the persons making such bids to carry them out. The municipality may accept such bids as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

(c) A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. Provided, however, that the municipality may, after a public hearing, extend the time for a period not to exceed three years.

**History:** En. Sec. 9, Ch. 195, L. 1959.

**11-3910. Issuance of bonds.** (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this act are declared to be issued for an



essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than ninety-eight per cent (98%) of par at public or private sale, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight per cent (98%) of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) The municipality may annually pay into a fund to be established for the benefit of such bonds any and all excess of the taxes received by it from the same property over and above the average of the annual taxes authorized without vote for a five-year period immediately preceding the acquisition of the property by the municipality for renewal purposes, such payment to continue until such time as all bonds payable from the fund are paid in full. Any other taxing unit in a municipality is authorized to allocate a like amount of such excess taxes to the municipality or municipalities in which it is situated.

(f) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(g) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

**History:** En. Sec. 10, Ch. 195, L. 1959.

**11-3911. Bonds as legal investments.** All banks, trust companies, bankers, savings banks and institutions, building and loan associations,



savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this act: Provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of, and the interest on, such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

**History:** En. Sec. 11, Ch. 195, L. 1959.

**11-3912. Property exempt from taxes and from levy and sale by virtue of an execution.** (a) All property of a municipality, including funds, owned or held by it for the purposes of this act, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this act by a municipality on its rents, fees, grants, or revenues from urban renewal projects.

(b) The property of a municipality, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

**History:** En. Sec. 12, Ch. 195, L. 1959.

**11-3913. Cooperation by public bodies.** (a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public

body authorized by law or by this act, may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality; (2) incur the entire expense of any public improvements made by such public body, in exercising the powers granted in this section; (3) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan; (4) lend, grant, or contribute funds to a municipality; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project, and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the urban renewal area; and provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(b) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of section 9 (b) [11-3909].

(c) For the purpose of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality, in addition to any authority to issue bonds pursuant to section 10 [11-3910], may issue and sell its general obligation bonds. Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

**History:** En. Sec. 13, Ch. 195, L. 1959.

**11-3914. Title of purchaser.** Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this act, shall be conclusively presumed to have been executed in compliance with the provisions of this act insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

**History:** En. Sec. 14, Ch. 195, L. 1959.

**11-3915. Exercise of powers in carrying out urban renewal project.** (a) A municipality may itself exercise its urban renewal project powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by section 16 [11-3916]) or a department or other officers of the municipality as they are authorized to exercise under this act.

(b) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(1) To formulate and coordinate a workable program as specified in section 4 [11-3904].

(2) To prepare urban renewal plans.

(3) To prepare recommended modifications to an urban renewal project plan.

(4) To undertake and carry out urban renewal projects as required by the local governing body.

(5) To make and execute contracts as specified in section 7 [11-3907], with the exception of contracts for the purchase or sale of real or personal property.

(6) To disseminate blight clearance and urban renewal information.

(7) To exercise the powers prescribed by section 7 (b) [11-3907], except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body.

(8) To enter any building or property, in any urban renewal area, in order to make surveys and appraisals in the manner specified in section 7 (c) [11-3907].

(9) To improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area.

(10) To insure real or personal property as provided in section 7 (c) [11-3907].

(11) To effectuate the plans provided for in section 7 (f) [11-3907].

(12) To prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation.

(13) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

(14) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

(15) To negotiate for the acquisition of land.

(16) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, way, or other places and to make recommendations with respect thereto.

(17) To organize, coordinate, and direct the administration of the provisions of this act.

(18) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this act that are not included in section 15 (b) [subsection (b) of this section] as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof, may



only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

**History:** En. Sec. 15, Ch. 195, L. 1959.

**11-3916. Urban renewal agency.** (a) When a municipality has made the finding prescribed in section 5 [11-3905] and has elected to have the urban renewal project powers, as specified in section 15 [11-3915], exercised, such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate, or the legislative body of a city may create an urban renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(b) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five commissioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the by-laws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The urban renewal agency or department or officers exercising urban renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this act shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

(d) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed.

**History:** En. Sec. 16, Ch. 195, L. 1959.



**11-3917. Prohibition against discrimination.** For all of the purposes of this act, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination.

**History:** En. Sec. 17, Ch. 195, L. 1959.

**11-3918. Interested public officials, commissioners, or employees.** No public official, or employee of a municipality or urban renewal agency or department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under section 15 [11-3915], shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, department or division head owns or controls, or owned or controlled within two years prior to the date of hearing on the urban renewal project, any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of section 15 [11-3915]. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this act shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or offices. Any violation of the provisions of this section shall constitute misconduct in office.

**History:** En. Sec. 18, Ch. 195, L. 1959.

**11-3919. Separability—act controlling.** Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall be not affected thereby.

Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

**History:** En. Sec. 19, Ch. 195, L. 1959.

**11-3920. Short title.** This act shall be known and may be cited as the "Urban Renewal Law."

**History:** En. Sec. 20, Ch. 195, L. 1959.



# REVISED CODES OF MONTANA

## VOLUME 2 1959 Cumulative Pocket Supplement

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 2 OF THE  
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2  
THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

*Edited by*

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

*Editorial Supervisor*

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers  
Indianapolis, Indiana



COPYRIGHT 1959

*by*

THE ALLEN SMITH COMPANY



## NEW LAWS IN VOLUME 2

For index see pocket supplement to Replacement Volume 9

### ENACTED IN 1957

County establishment of minimum electrical installation standards, 16-1180, 16-1181.  
County water districts, 16-4501 to 16-4534.  
Judges of elections, instruction of, 23-612.  
Metropolitan sanitary and/or storm sewer systems, 16-4401 to 16-4413.  
Replacement Volumes 2 and 5, adoption, 12-335, 12-336.  
Rural special improvement district revolving fund, 16-1633 to 16-1637.  
Wild animals damaging property, 26-135, 26-136.

### ENACTED IN 1959

Dog licensing, 16-4601 to 16-4615.  
Election voting machine, arrangement of ballot, 23-1608A.  
Milk industry supervision, 27-426 to 27-429.  
Recording by photostatic or other process, 16-2428 to 16-2431.  
Replacement Volumes 1 and 9, adoption, 12-337, 12-338.  
Rural improvement district liability accounts, cancellation of record of old accounts, 16-1638.  
Salaries for elected state officials, 25-501, 25-501.1.  
Special nonresident antelope and deer licenses, 26-202.1, note.  
Wild turkey tags, 26-510 to 26-512.

## AMENDMENTS IN VOLUME 2

### Counties,

Claims against, 16-1802.  
County clerk, 16-2903.  
County commissioners,  
    Compensation, 16-912.  
    Meetings, 16-910.  
Powers and duties, 16-1008A, 16-1009, 16-1015, 16-1030.  
County finance, 16-2026, 16-2033.  
County printing, 16-1203 to 16-1205, 16-1208, 16-1210, 16-1212 to 16-1214, 16-1217, 16-1219.  
County water districts, 16-4508, 16-4520, 16-4527, 16-4528.  
Office hours, 16-2414.  
Rural improvement districts, 16-1620, 16-1629.  
Sheriff, 16-2723, 25-226.

### Credit unions, 14-102, 14-106.

### Elections,

Absentee voting, 23-1302, 23-1303, 23-1306, 23-1307, 23-1311, 23-1313, 23-1320, 23-1401 to 23-1405.  
Ballots, 23-1006.  
Canvass, 23-1808, 23-1813.  
Conduct, 23-1210, 23-1213, 23-1219.  
Direct primary, 23-902, 23-908, 23-909, 23-929.  
Judges and clerks, 23-608.  
Qualifications and privileges of electors, 23-304.  
Registration, 23-503, 23-511, 23-515, 23-519, 25-527.  
Returns, 23-1702, 23-1703, 23-1709, 23-1714, 23-1715.  
Supplies, 23-704.  
Voting machines, 23-1608.

Fees and salaries. 25-226, 25-231, 25-306, 25-309, 25-508, 25-605.

## AMENDMENTS IN VOLUME 2 (Continued)

### Fish and game,

Beavers, 26-401.

Commission, 26-103 to 26-105.

Licenses, 26-201, 26-202.1, 26-202.3, 26-222.

Restrictions on taking, 26-332.

Shipment of animals from state, 26-703.

Taxidermist's license, 26-907.

Wardens, 26-107.

### Food and drugs,

Food stores, 27-310.

Funds of county, city, and towns, 16-2618.

Justices of the peace, 16-3605.

Milk Control Act, 27-403 to 27-407, 27-409, 27-410, 27-414, 27-416.

Rural Electric and Telephone Cooperative Act, 14-501 to 14-504, 14-508, 14-510, 14-516, 14-528, 14-530.

# MONTANA REVISED CODES

## TITLE 12—CODES AND LAWS

Chapter 3. Revised Codes of Montana 1947, codification authorized, 12-335 to 12-338.

### CHAPTER 1—LAW DEFINED—HOW EXPRESSED—APPLICABILITY OF COMMON LAW

#### 12-101. (5670) Definition of Law.

##### References

Cited or applied in *State ex rel. Burns v. Lacklen*, 129 M 243, 284 P 2d 998,

1004; *Ruona v. City of Billings*, — M —, 323 P 2d 29, 32 (dissenting opinion).

#### 12-102. (5671) How expressed.

##### Written Law

The written law of this state is contained in its constitution and statutes and the constitution and statutes of the United States and it prevails as against the declaration or promulgation by this court of an opposing rule at variance with and contrary to such written law. *State ex rel.*

*Burns v. Lacklen*, 129 M 243, 284 P 2d 998, 1004.

##### References

Cited or applied in *Ruona v. City of Billings*, — M —, 323 P 2d 29, 32 (dissenting opinion).

#### 12-103. (5672) Common law, when rule of decision.

##### References

Cited in *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 983.

#### 12-104. (10703) Common law, applicability of.

##### Operation and Effect

Common-law rules have been supplanted by statutory law in all fields covered

by statute. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 983.

### CHAPTER 2—THE ENACTMENT, EFFECT, ARRANGEMENT AND CONSTRUCTION OF THE CODES

#### 12-201. (3) Laws, when retroactive.

##### References

Cited or applied in *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 872.

#### 12-202. (4) Codes, how construed.

##### Operation and Effect

In construing a statute the whole act must be read together, and where there are several provisions or particulars such a construction is to be adopted as will give effect to all, if possible. *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 870.

##### References

Cited or applied in *Gaffney v. Industrial Accident Board of Montana*, 129 M 394, 287 P 2d 256, 259; *Carlson v. Flathead County*, 130 M 24, 293 P 2d 273, 275; *State ex rel. Morgan v. Board of Examiners et al.*, 131 M 188, 309 P 2d 336, 338; *Hill v. Billings*, — M —, 328 P 2d 1112, 1114.

### CHAPTER 3—REVISED CODES OF MONTANA 1947, CODIFICATION AUTHORIZED

Section 12-335. Adoption of Replacement Volumes 2 and 5 as prima facie laws of Montana—citation.

12-336. Omissions—inaccuracies—effect.

12-337. Adoption of Replacement Volumes 1 and 9.

12-338. Omissions—inaccuracies—effect.

#### 12-330. Revised Codes of Montana 1947 adopted as law.

##### Operation and Effect

Since chapter 84 of the 1937 Session Laws (Montana Retail Liquor License Act) was incorporated without reference to the original title in the Revised Codes of Montana 1947, as section 4-420, and

the Revised Codes of Montana 1947 were approved, legalized and adopted by the legislature under this section, any defect or omission in the title of the 1937 law was thereby cured. *State v. Garcia*, 132 M 600, 319 P 2d 962, 963.

**12-335. Adoption of Replacement Volumes 2 and 5 as prima facie laws of Montana—citation.** Replacement Volumes Number 2 and Number 5 of the Revised Codes of Montana of 1947 as published by the publishers and distributors of said Revised Codes of Montana of 1947 are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana of 1947 as included in the original compilation of the Revised Codes of Montana of 1947.

**History:** En. Sec. 1, Ch. 8, L. 1957.

##### Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

the Replacement Volumes Number 2 and Number 5 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said codes.

**12-336. Omissions — inaccuracies — effect.** Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

**History:** En. Sec. 2, Ch. 8, L. 1957.

##### Effective Date

Section 3 of Ch. 8, Laws 1957 provided

the act should be in effect from and after its passage and approval. Approved February 9, 1957.

**12-337. Adoption of Replacement Volumes 1 and 9.** Replacement Volume Number 1 (in two parts) of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said Revised Codes of Montana of 1947 is hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volume may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended



the sections of the Revised Codes of Montana of 1947, as included in the original compilation of the Revised Codes of Montana of 1947. Replacement Volume Number 9 is hereby adopted as an official part of the Revised Codes of Montana of 1947 and as the general index to the said Revised Codes of Montana.

**History:** En. Sec. 1, Ch. 2, L. 1959.

**Title of Act**

An act to approve and legalize and adopt as prima facie the laws of Montana Replacement Volume Number 1 (in two

parts) and to adopt as official Replacement Volume Number 9 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said code; and providing an effective date.

**12-338. Omissions — inaccuracies — effect.** Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously or incorrectly set forth in said replacement volumes.

**History:** En. Sec. 2, Ch. 2, L. 1959.

**Effective Date**

Section 3 of Ch. 2, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved January 28, 1959.

## TITLE 13—CONTRACTS

### CHAPTER 3—CONSENT

#### 13-308. (7480) Actual fraud, acts constituting.

##### Bad Faith

Where seller of land made representation that he had authority to sell his brother's land, which was adjoining, whereas in fact he did not have such authority, and where other evidence indi-

cated that the seller made no effort to carry out other provisions of his contract for sale, the district court was correct in finding him guilty of bad faith. *Hart v. Honrud*, 131 M 284, 309 P 2d 329, 332.

#### 13-316. (7488) Mutuality of consent.

##### References

Cited in *Holmes v. Potts*, 132 M 477, 319 P 2d 232, 238.

### CHAPTER 4—OBJECT

#### 13-404. (7501) When contract wholly void.

##### References

Cited or applied in *Bennett v. Dodgson*, 129 M 228, 284 P 2d 990, 995.

### CHAPTER 5—CONSIDERATION

#### 13-511. (7513) Burden of proof to invalidate, sufficient consideration.

##### Operation and Effect

In an action by lessor to cancel an oil and gas lease where the requirement of a geological survey was a part of the

consideration, it was necessary for the lessor to plead and prove the requirement. *Braun v. Mon-O-Co Oil Corp.*, 133 M 101, 320 P 2d 366, 369.

### CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

#### 13-606. (7519) What contracts must be in writing.

##### Rights-of-Way of Necessity

There are no implied grants or reservations of rights-of-way of necessity in Montana. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

##### Sale of Ranch

In action for specific performance of contract for purchase of ranch of defendants, writings were sufficient to take the case out of the statute of frauds where instrument giving broker exclusive right

for 30 days to sell ranch for \$30,000, provided that defendants were to pay broker a \$1,000 commission, recited that terms of sale were cash to defendants, possession should be taken by purchaser on named date and that defendants, who retained a 5% royalty, agreed to pay 1953 taxes and transfer all lease land to purchaser, who accepted unqualifiedly in writing accompanied by check as down payment. *Ward v. Mattuschek*, — M —, 330 P 2d 971.

### CHAPTER 7—INTERPRETATION OF CONTRACTS

#### 13-704. (7529) Intention to be ascertained from language.

##### References

Cited or applied in *James v. Prudential*

*Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127.

**13-705. (7530) Interpretation of written contracts.**

**Operation and Effect**

Parol evidence which tended to vary or alter the terms of a written chattel mortgage will be disregarded where the chattel mortgage was plain and unambigu-

ous and needed no construction. *First Nat. Bank of Plains v. Green Mt. Soil Conservation District*, 130 M 1, 293 P 2d 289.

**13-706. (7531) Writing—when disregarded.**

**Operation and Effect**

This statute does not preclude the trial court from reforming an instrument which

by reason of mistake or fraud fails to set forth the correct contentions of the parties. *Carroll v. Funk*, 222 F 2d 508, 511.

**13-707. (7532) Effect to be given to every part of contract.**

**Lease With Option to Buy**

Plaintiff's option to buy was exclusive and not conditioned upon defendants' decision to sell where instrument did not use the term "first option to buy" and the entire language of the agreement showed that plaintiff was given an exclusive option to buy the property described under the lease; that his method of exercising his option was by tendering \$1,500 to the defendant, as called for by "Plan No. 2." *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

intent of the parties, but will grasp the instrument by its four corners and in the light of the entire instrument, ascertain the paramount and guiding intention of the parties. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

More isolated tracts, clauses and words will not be allowed to prevail over the general language utilized in the instrument. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

**References**

Cited or applied in *Davis v. Burton*, 128 M 434, 278 P 2d 213, 218; *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127.

**Operation and Effect**

A court, in interpreting a written instrument, will not isolate certain phrases of that instrument in order to garner the

**13-708. (7533) Several contracts—when taken together.**

**Property Settlement**

Agreements as to disposition of property between estranged husband and wife, which were obviously to become operative in the future when a divorce proceeding was instituted, with condition that resistance to divorce would render the property settlement nugatory, when construed together, facilitated divorce and were void as a violation of public policy. *Western Life Ins. Co. v. Bower*, 153 F Supp 25, 30.

Provision of property settlement agreement under which husband relinquished right to change beneficiary of life insurance policy, was severable from provisions facilitating divorce, and was enforceable, where wife presumably released certain property rights in consideration therefor. *Western Life Ins. Co. v. Bower*, 153 F Supp 25.

**References**

Cited or applied in *Fey v. A. A. Oil Corporation*, 129 M 300, 285 P 2d 578, 583.

**13-710. (7535) Words to be understood in usual sense.**

**References**

Cited or applied in *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127.

**13-715. (7540) Interpretation in sense in which promisor believed, etc.**

**Reservation of Mineral Interest**

In action for specific performance arising over interpretation of contract for conveyance of land reserving mineral interest, where cross complaint of defendants alleged that the contract was ambiguous and uncertain and prayed for a

declaratory judgment to adjudicate the rights of the parties, it was the duty of the trial court to determine the intent of the parties and the exclusion of parol evidence of intent was error. *Stokes v. Tutvet*, — M —, 328 P 2d 1096, 1103, 1104.

**13-720. (7545) Words to be taken most strongly against whom.****Insurance Policies**

Even though an insurance contract is to be construed liberally in favor of the insured and strictly against the insurer, contracts of insurance should be given a fair and reasonable construction. *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127.

**Sale Agreement**

If any uncertainty exists in the sale agreement and the deeds, it must be construed most strongly against the person causing the uncertainty. This was true in the case of a realtor, scrivener, who in turn was vendor's agent. *Voyta v. Clonts*, — M —, 328 P 2d 655, 661.

**13-723. (7548) Time of performance of contract.****Operation and Effect**

That no definite time was stipulated for performance by the purchaser of the payment of money is immaterial for our

law implies an agreement here to perform within a reasonable time. *Bennett v. Dodgson*, 129 M 228, 284 P 2d 990, 994.

**13-727. (7552) Executed and executory contracts defined.****References**

Cited in *Dalakow v. Geery*, 132 M 457, 318 P 2d 253, 256.

**CHAPTER 8—UNLAWFUL CONTRACTS****13-801. (7553) What is unlawful.****Operation and Effect**

A resolution of the board of county commissioners which extinguished the assessed tax of a taxpayer was void as such boards have no power, authority or jurisdiction under the constitution nor statutes to reduce, compromise, remit, release, cancel, diminish or extinguish any state tax, obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined and fixed by the state board of equalization. Likewise, the direction

of the board directing the county attorney to stipulate with the attorneys for the taxpayer, to request the court to enter judgment against the county and state was and is wholly void and of no legality whatever. Such void act, understanding and agreement by public officials, void in its inception, is not validated by performance and remains a void act or agreement under the public policy established by the legislature. *Carlson v. Flathead County*, 130 M 36, 293 P 2d 279, 284. (Dissenting opinion, 130 M 36, 293 P 2d 279, 286.)

**13-806. (7558) Restraints upon legal proceedings.****Agreement as to Venue**

This statute is not violated by a stipulation regarding venue of an action brought against one in a county where

he agreed it might be brought. *Electrical Products Consolidated v. Bodell*, 132 M 243, 316 P 2d 788, 790.

**CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION****13-907. (7569) Written contracts—how modified.****Acceleration Agreement**

Plaintiff, subcontractor, a bridge construction specialist, under road construction project, was entitled to part of acceleration payment under prime contract pursuant to agreement, where written contract was orally modified to provide for acceleration of certain items of work by plaintiff and for payment of additional sums to him; there was consideration for the modification; and such work was performed by plaintiff. *Dalakow v. Geery*, 132 M 457, 318 P 2d 253, 256.

**Operation and Effect**

Parol evidence which tended to vary or alter the terms of a written chattel mortgage will be disregarded, where the chattel mortgage was plain and unambiguous and needed no construction. *First Nat. Bank of Plains v. Green Mt. Soil Conservation District*, 130 M 1, 293 P 2d 289.



## TITLE 14—COOPERATIVES

Chapter 1. Credit unions, 14-102, 14-106.

5. Rural electric and telephone cooperative act, 14-501 to 14-504, 14-508, 14-510, 14-516, 14-528, 14-530.

### CHAPTER 1—CREDIT UNIONS

Section 14-102. Incorporation of credit union association.

14-106. Supervision of credit unions by state examiner—fee for examinations.

**14-102. (6109.13) Incorporation of credit union association.** Whenever any number of persons not less than five (5) shall desire to incorporate a credit union association having for its object the conduct and operation of such an association as defined in this act they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

1. The name shall not be the same or too closely resembling that in use by any existing corporation established under the laws of this state. The words credit union shall form a part of the name of the association, and no corporation not organized under this act shall be entitled to use a name embodying said combination of words, provided any associations now existing may continue their present names.

2. The principal office, or place of business of the association shall be designated in said articles and shall be within this state.

3. The par value of the shares of the credit union which shall not exceed ten dollars (\$10.00) each.

4. A provision that such association is organized under this act for the purpose herein expressed.

5. The names and residences of the persons who subscribe and acknowledge the said declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators.

The articles of incorporation shall be presented to the state examiner and ex-officio superintendent of banks with the bylaws of the proposed credit union, and if he finds that the incorporators have complied with this act, he shall attach his written approval to the articles of incorporation.

Said articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation over the great seal of the state of Montana, and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the association is located.

**History:** En. Sec. 2, Ch. 105, L. 1929;  
amd. Sec. 1, Ch. 142, L. 1959.

#### Repealing Clause

Section 2 of Ch. 142, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1959 amendment added the last two paragraphs to this section.

**14-106. (6109.17) Supervision of credit unions by state examiner—fee for examinations.** Credit unions shall be under the supervision of the state examiner of the state of Montana. They shall report to him at least semi-annually on or before June thirtieth (30th) and December thirty-first (31st) of each year. The state examiner shall examine all credit unions doing business in this state at least once a year. Also, whenever ten per centum (10%) of the subscribed stock of any credit union files a written application with said state examiner requesting him to make a special examination of said credit union he shall forthwith examine the same, and the findings of the examiner to be available to the petitioners and the board of directors of the credit union notwithstanding any other provisions of law.

For each examination of a credit union by the state examiner, the association examined shall pay to the state treasurer a fee at the rate of forty-five dollars (\$45.00) a day for each person engaged in the examination.

**History:** En. Sec. 6, Ch. 105, L. 1929; amd. Sec. 1, Ch. 136, L. 1955; amd. Sec. 1, Ch. 115, L. 1959.

at the rate currently in effect for all state and county employees" which appeared at the end of the section.

#### **Amendment**

The 1959 amendment increased the fee for examination from \$30 to \$45 a day and deleted the words "plus the necessary transportation expenses and per diem

#### **Repealing Clause**

Section 2 of Ch. 115, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## **CHAPTER 5—RURAL ELECTRIC AND TELEPHONE COOPERATIVE ACT**

Section 14-501. Act, how cited.

14-502. Purpose.

14-503. Powers.

14-504. Name.

14-508. Members.

14-510. Voting districts.

14-516. Conversion of existing corporations.

14-528. Exemption from excise taxes—license fee.

14-530. Definitions.

**14-501. Act, how cited.** This act may be cited as the "rural electric and telephone cooperative act."

**History:** En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957.

#### **Amendment**

The 1957 amendment inserted the words "and telephone" to the name of this act.

**14-502. Purpose.** Cooperative, nonprofit, membership corporations may be organized under this act for the following purposes:

(a) For the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, in which electrical current and service are not otherwise available, from existing facilities and plants;

(b) For the purpose of making generally available in rural areas adequate telephone service through the improvement and expansion of existing telephone facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of rural users thereof, provided that non-

duplication of lines, facilities or systems providing reasonably adequate service will result therefrom.

Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "cooperatives."

**History:** En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957.

inserted the words "for the following purposes" at the end of the introduction; in subd. (a) substituted "are" for "is"; added subd. (b), and began a new paragraph with the word "Corporations."

#### Amendment

The 1957 amendment subdivided this section into (a) and (b) subdivisions;

**14-503. Powers.** A cooperative shall have power:

- (a) To sue and be sued, in its corporate name;
- (b) To have perpetual existence;
- (c) To adopt a corporate seal and alter the same at pleasure;
- (d) To become a member in one or more other cooperatives or corporations or to own stock therein;
- (e) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities), as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;
- (f) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights of way and easements;
- (g) To borrow money and otherwise contract indebtedness, and to issue notes, bonds and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;
- (h) To construct, maintain and operate electric transmission and distribution lines, or telephone lines, facilities or systems, along, upon, under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly-owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems, or telephone lines, facilities or systems;
- (i) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems, or telephone lines, facilities or systems;



(j) To conduct its business and exercise any or all of its powers within or without this state;

(k) To adopt, amend and repeal by-laws;

(l) In the case of corporations organized under the provisions of paragraph (a) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act:

(1) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members;

(2) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electrical and plumbing fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(3) To make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants.

(m) In the case of corporations organized under the provisions of paragraph (b) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act:

(1) To improve and expand existing telephone lines, facilities and systems in rural areas and to construct, acquire, operate and furnish such additional telephone lines, facilities, and systems, as are required to assure the availability of adequate telephone service to the widest practicable number of rural users thereof, provided that no duplication of lines, facilities or systems providing reasonably adequate service will result therefrom.

(2) To make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises for telephone service, and installing therein telephone fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such telephone fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(n) To do and perform any and all other acts and things, and to have any [and] exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.



**History:** En. Sec. 3, Ch. 172, L. 1939;  
amd. Sec. 3, Ch. 80, L. 1957.

**Compiler's Note**

The bracketed word "and" in subd. (n) was inserted by the compiler.

**Amendment**

The 1957 amendment re-subdivided and rewrote this section. For section prior to amendment see parent volume.

**14-504. Name.** The name of each cooperative shall include the words "electric" or "telephone" and "cooperative," and the abbreviation "Inc.," provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this act.

**History:** En. Sec. 4, Ch. 172, L. 1939;  
amd. Sec. 4, Ch. 80, L. 1957.

**Amendment**

The 1957 amendment inserted the words "or telephone" both times they appear in this section.

**14-508. Members.** (a) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The by-laws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership.

(b) An annual meeting of the members shall be held at such time as shall be provided in the by-laws.

(c) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per centum (10%) of the members, or by the president.

(d) Meetings of members shall be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(e) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail,

not less than ten (10) nor more than twenty-five (25) days before the date of the meeting.

(f) Five per centum (5%) of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members, but the by-laws may prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(g) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the by-laws so provide, may also be by proxy or by mail, or both. If the by-laws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as proxy for more than three (3) members at any meeting of the members.

**History:** En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957.

**Amendment**

The 1957 amendment inserted the words

"or telephone service" each time they appear in subd. (a) and in the last sentence of said subdivision substituted the word "to" for "of."

**14-510. Voting districts.** Notwithstanding any other provisions of this act, the by-laws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district (1) a designated number of trustees shall be elected by the members residing therein, or (2) a designated number of delegates shall be elected by the members residing therein, or (3) both such trustees and delegates shall be elected by such members. In any such case the by-laws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

**History:** En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957.

**Amendment**

The 1957 amendment inserted the words "or telephone service" and substi-

tuted the word "to" for "of" which appeared between the words "respect" and "each" in the first sentence.

**14-516. Conversion of existing corporations.** Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy or telephone service in rural areas may become subject to this act with the same effect as if originally organized under this act by complying with the following requirements:

(a) The proposition for the conversion of such corporation into a cooperative under this act and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of the corporation prior to its conversion into a cooperative under this act; (2) the address of the

principal office of such corporation; (3) the date of the filing of its articles of incorporation in the office of the secretary of state; (4) the statute or statutes under which such corporation was organized; (5) the name assumed by such corporation; (6) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this act; (7) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and (8) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs;

(b) The proposition for the conversion of such corporation into a cooperative under this act and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this act and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

(c) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative under this act and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this act; and

(d) The term "articles of incorporation" as used in this act shall be deemed to include the articles of conversion of a converted corporation.

**History:** En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957.

**Amendment**

The 1957 amendment in the first paragraph inserted the words "or telephone

service"; deleted the words "be converted into a cooperative and" which appeared between the words "may" and "become" and inserted the words "under this act" each time they appear in subds. (a), (b) and (c).

**14-528. Exemption from excise taxes—license fee.** Cooperatives and foreign corporations, transacting business in this state pursuant to the provisions of this act, shall pay annually, on or before the first day of July, to the secretary of state, a fee of ten dollars (\$10.00) for each one



hundred (100) persons or fractions thereof to whom electricity or telephone service is supplied within the state, but shall be exempt from all other excise and income taxes of whatsoever kind or nature.

**History:** En. Sec. 28, Ch. 172, L. 1939;      **Amendment**  
amd. Sec. 8, Ch. 80, L. 1957.

The 1957 amendment inserted the words  
"or telephone service."

**14-530. Definitions.** In this act, unless the context otherwise requires:

(a) "Rural area" as applied to all corporations organized under the provisions of paragraph (a) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act, means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto; "rural area" as applied to all corporations organized under the provisions of paragraph (b) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act, means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of fifteen hundred (1500) persons.

(b) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic; and

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

**History:** En. Sec. 30, Ch. 172, L. 1939;  
amd. Sec. 1, Ch. 151, L. 1949; amd. Sec.  
9, Ch. 80, L. 1957.

and approval of chapter 172, Session Laws  
of Montana, 1939, or subsequent thereto."

#### **Amendment**

The 1957 amendment made substantial changes in subd. (a). Prior to this amendment it read "(a) 'Rural area' means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage

#### **Repealing Clause**

Section 10 of Ch. 80, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 11 of Ch. 80, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 2, 1957.



## TITLE 15—CORPORATIONS

### CHAPTER 11—DISSOLUTION OF CORPORATIONS BY QUO WARRANTO —BY DECREE OF COURT—BY ACT OF DIRECTORS AND BY OTHER METHODS

#### 15-1102. (6011) Winding up the affairs of and disposing of property, etc.

##### Suits by Stockholders

Individuals cannot maintain an action for a corporation on the theory that they are the possible successors to the corpo-

ration's title upon the expiration of the corporate life. *Malcom v. Stondall Land & Investment Co.*, 129 M 142, 284 P 2d 258, 261.

## TITLE 16—COUNTIES

- Chapter 9. County commissioners—organization—meetings—compensation, 16-910, 16-912.
10. General powers and duties of county commissioners, 16-1008A, 16-1009, 16-1015, 16-1030.
  11. Special powers and duties of county commissioners, 16-1180, 16-1181.
  12. County printing—commissioners to contract for, 16-1203 to 16-1205, 16-1208, 16-1210, 16-1212 to 16-1214, 16-1217, 16-1219.
  16. Rural improvement districts, 16-1620, 16-1629, 16-1633 to 16-1638.
  18. Claims against counties, county warrants, 16-1802.
  20. County finance—bonds and warrants, 16-2026, 16-2033.
  24. County officers—qualifications—general provisions, 16-2414, 16-2428 to 16-2431.
  26. County treasurer—duties as to warrants and other county finances, 16-2618.
  27. Sheriff, 16-2723.
  29. County clerk, 16-2903.
  36. Constable and justices of the peace, 16-3605.
  44. Metropolitan sanitary and/or storm sewer systems, 16-4401 to 16-4413.
  45. County water districts, 16-4501 to 16-4534.
  46. Dog licensing, 16-4601 to 16-4615.

### CHAPTER 8—GENERAL POWERS AND LIMITATIONS UPON COUNTIES

#### 16-804. (4444) Enumeration of powers.

##### **Tax Sales**

Board of county commissioners has the power and the authority to dispose of and convey real estate acquired through tax deeds. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

### CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION

- Section 16-910. Regular meetings—extra sessions.  
16-912. Compensation of members of board.

**16-910. (4462) Regular meetings—extra sessions.** The board of county commissioners, except as may be otherwise required of them, may meet at the county seat of their respective counties on the first and third Mondays of each and every month of the year, except when meeting as the county board of equalization as provided by law, for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, as which time they may sit not exceeding eight days. But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration; provided, that the limitations at to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes.

**History:** Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929; amd. Sec. 1, Ch. 132, L. 1959. Cal. Pol. C. Sec. 4032.

### Amendment

The 1959 amendment added the provision for meeting on the third Monday in each month and added the words "except when meeting as the county board of equalization as provided by law."

### Repealing Clause

Section 2 of Ch. 132, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**16-912. (4464) Compensation of members of board.** Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary as hereinafter set forth:

First class	\$5,000.00
Second class	\$4,900.00
Third class	\$4,800.00
Fourth class	\$4,700.00

Each member of the board of county commissioners in all other counties is entitled to fifteen dollars (\$15.00) per day for each day's attendance on the sessions of the board, and seven cents (7¢) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties, and no other compensation must be allowed.

**History:** En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957.

fourth, in the second paragraph inserted the words "in all other counties" and substituted "fifteen dollars (\$15.00)" for "twelve dollars (\$12.00)."

### Repealing Clause

Section 2 of Ch. 238, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### Amendment

The 1957 amendment added the first paragraph with classifications first through

## CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1008A. Erection and management of county buildings and other improvements.

- 16-1009. Sale of property.
- 16-1015. Taxation.
- 16-1030. Lease of county property.

**16-1008A. (4465.8) Erection and management of county buildings and other improvements.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power in their discretion to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two (2) or more thereof. Such commission shall be composed of the senior district court judge of the county, chairman of the board of county commissioners, the chairman of the school

board for the district in which any of the above-named buildings are situated, and the mayor of the city in such district, and five (5) lay members to be appointed by the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above-named buildings are situated, and the mayor of the city in such district, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commission together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the nonindigent sick, provided said nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

**History:** En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959. See history of Sec. 16-1001.

#### **Amendments**

The 1957 amendment in the third paragraph deleted the words "and which has been, or may be, leased, as provided by section 16-1032," which appeared in the second sentence immediately following

the words "provisions of this act" and also deleted a former last paragraph which read "Nothing herein contained shall be construed as amending or repealing sections 16-1163 to 16-1165."

The 1959 amendment in the first sentence of the second paragraph, inserted the words "county parks."

#### **Repealing Clause**

Section 2 of Ch. 76, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**16-1009. (4465.9) Sale of property.** (1) The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred (\$100.00) dollars, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four successive weeks and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall



be paid in cash. In all sales of property of a value in excess of one hundred (\$100.00) dollars, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such property, and such appraised value shall be stated in the notice of sale, provided, that whenever a county purchases equipment, as provided in section 16-1803, Revised Codes of Montana, 1947, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as herein provided, or may be sold at public auction as herein provided, in the discretion of the board of county commissioners.

(2) The board of county commissioners shall have the power to sell any property, real or personal, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, to the school district directly for its appraised value which shall represent a fair market value of such property without the necessity of a public auction. If the property to be sold to the school district is reasonably of a value in excess of one hundred (\$100.00) dollars, notice of the sale shall be given by publication in a newspaper in said county, notice to be published once a week for four (4) successive weeks and posted in five (5) public places in the county.

(3) Any taxpayer who may believe that such appraised value is less than the actual value of the property, may at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value. When any such objection is filed it vacates the sale and the board of county commissioners must at once apply to the judge of the district court to have such property re-appraised. Upon such application the district judge shall appoint for such purpose three (3) disinterested persons whose appraisal must be made and filed with the county clerk and recorder, which new appraisal or re-appraisal shall be used in the next sale of such property. Such appraisers, when appointed by the district judge, and after filing their appraisal report with the county clerk and recorder, shall be allowed five dollars (\$5.00) per day for each day necessarily employed in making such appraisal, and their necessary and actual expenses. No sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within three (3) months prior to the date of the sale, and no such sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety per cent (90%) of the appraised value thereof. All deferred payments on the purchase price of any property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred dollars (\$100.00), sale thereof may be had at either public or private sale, as in the discretion of the board of county

commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five (5) public places in the county at least five (5) days before the date of sale. No title to any property sold under the provisions hereof, shall pass from the county until the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county.

(5) Provided, however, if within one (1) year no immediate sale be had of real estate attempted to be sold under the provisions of this section, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

(6) The funds derived from the sale in the discretion of the board of county commissioners may be credited to a construction reserve account and thereafter used for capital outlay for present or future construction of or an addition to a courthouse, or county jail or county hospital.

**History:** En. Subd. 10, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957. See history of Sec. 16-1001.

#### **Amendment**

The 1957 amendment inserted new subds. (2) and (6) and renumbered former subds. (2) to (4) as (3) to (5) and in the last sentence of subd. (3) inserted the words "or to any school district without public auction."

#### **Repealing Clause**

Section 2 of Ch. 110, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**16-1015. (4465.12) Taxation.** The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law: To levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills, except as hereinafter provided, on each dollar of the taxable valuation for any one (1) year to levy such taxes as are required to be levied by special or local statutes. Provided, however, that on and after July 1, 1959, and extending to June 30th, 1961, the board of county commissioners is authorized in its discretion to levy an additional four (4) mills on each dollar of the taxable valuation for any one (1) year, provided, however, after that period of time the levy of sixteen (16) mills shall still be in effect.

**History:** En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959. See history of Sec. 16-1001.

#### **Effective Date**

Section 3 of Ch. 110, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

#### **Tax Sales**

Board of county commissioners has the power and the authority to dispose of and convey real estate acquired through tax deeds. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

#### **Amendments**

The 1957 amendment substituted "July 1, 1957" for "July 1, 1955" and "June 30th, 1959" for "June 30th, 1957."

The 1959 amendment inserted the words "except as hereinafter provided": substituted "July 1, 1959" and "June 30th, 1961" for "July 1, 1957" and "June 30th,

1959" respectively; substituted "an additional four (4) mills" for "not to exceed twenty (20) mills" and added the last proviso in this section.

#### Repealing Clauses

Section 2 of Ch. 48, Laws 1957 and Sec. 2 of Ch. 212, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**16-1030. (4465.27) Lease of county property.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare, and all revenue derived therefrom, except as otherwise provided, shall be paid into the county treasury. On the tenth day of January and the tenth day of July in each year the county treasurers shall distribute such revenues to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year. All such property must be leased subject to sale by the board, and no lease shall be for a period to exceed ten (10) years, save and except as to deposits of coal only or coal and the surface above the same, owned by any county or to which any county has heretofore or may hereafter acquire title by tax title, tax deed or otherwise, which lease or leases may be for a period of ten years and to run and continue as long thereafter as coal is being mined and extracted from the leased property in commercial quantities and that as to all such deposits of coal only or coal and surface the provisions of section 2208.1 and 2235 of the Revised Codes of the state of Montana, A. D. 1935 and all other provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made hereunder shall be in force and effect.

**History:** En. Subd. 28, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959. See history of Sec. 16-1001.

#### Amendment

The 1959 amendment increased the maximum period of leases, other than coal leases, from 3 years to 10 years.

#### Compiler's Note

Sections 2208.1 and 2235, referred to in this section, were repealed by Sec. 10, Ch. 171, Laws 1941.

#### Repealing Clause

Section 2 of Ch. 11, Laws 1959 repealed all acts or parts of acts in conflict therewith.

## CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1180. Minimum standards for electrical equipment installation—permits.  
16-1181. When act not applicable—specific exclusions.

### 16-1126. (4486) Special counsel—acting county attorney.

#### Presumption of Regular Appointment

On appeal from a conviction for assault which was prosecuted by a special prosecutor where the record does not show whether any appointment was made un-

der this section, the court will indulge the presumption that the appointment was regularly made in the absence of a showing to the contrary. *State v. Cockrell*, 131 M 254, 309 P 2d 316, 319.



**16-1180. Minimum standards for electrical equipment installation—permits.** The board of county commissioners of counties are hereby authorized, in their discretion:

(a) To establish by resolution suitable minimum standards for the installation of all electrical equipment, which standards, so far as practicable, shall conform to the National Board of Fire Underwriters Electrical Code, or the Rural Electrical Association wiring standards.

(b) To provide for the issuance of permits as a prerequisite to the erection, construction, reconstruction, alteration, or enlargement of any new or existing installation and for the inspection of such installation, and to establish and collect reasonable fees therefore, which fees shall be in such amount as to cover the costs of such permit and inspection. The fees so collected are to go to the general fund of the county.

**History:** En. Sec. 1, Ch. 49, L. 1957.

**Title of Act**

An act authorizing counties to establish minimum standards for the installation of

electrical equipment; providing for issuance of permits for such installation; providing for the inspection of same; and providing for exclusions herefrom; and providing for a repealing clause.

**16-1181. When act not applicable—specific exclusions.** This act shall not apply when there is in effect supervised inspection according to the Electrical Code of the National Board of Fire Underwriters or the Rural Electrical Association wiring standards and there is hereby specifically excluded herefrom, the following installations or use of any electrical equipment:

(a) Installations or use in mines, mills or smelters, oil refineries, ships and railway cars, or to automotive equipment.

(b) Installations or use by electricity supply companies or communication agencies in the generation, transmission or distribution of electricity or for the operation of signals or the transmission of intelligence, or to television or radio installations; and

(c) Installations or use by a railway utility in the exercise of its functions as a utility.

(d) Any farm or ranch structure or building situated on a tract of land in excess of five (5) acres.

This act shall not be construed to prohibit the installation of the electrical equipment by the owner of the property.

**History:** En. Sec. 2, Ch. 49, L. 1957.

**Repealing Clause**

Section 3 of Ch. 49, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 12—COUNTY PRINTING—COMMISSIONERS TO CONTRACT FOR**

- Section 16-1203. Envelopes.  
 16-1204. Letterheads.  
 16-1205. Legal blanks.  
 16-1208. Tax receipts in quintuple and more or less copies.  
 16-1210. Imprinting corner cards on government stamped envelopes and printing post cards, stock furnished.  
 16-1212. Special ruled and printed forms.  
 16-1213. Bound books.



- 16-1214. Size 18 x 11½ record books only.  
 16-1217. Stock forms without county name.  
 16-1219. Bids, how made—other prices.

**16-1203. Envelopes.**

			Add'l.
	500	1000	1000
White Wove 6¾-24 Grade 400	\$ 9.45	\$13.50	\$ 7.75
6¾-28 Grade 450	9.75	14.10	8.40
10-24 Grade 600	10.70	16.05	10.35
10-28 Grade 700	11.35	17.35	11.60
White Bond 6¾-20 Grade 400	9.45	13.50	7.75
10-20 Grade 600	10.70	16.05	10.35
Manila or Kraft			
6¾-20 Grade 400	8.80	12.20	6.80
10-28 Grade 700	10.10	14.75	9.40
12-28 Grade 1000	11.35	17.35	11.95

History: En. Sec. 3, Ch. 118, L. 1937;  
 amd. Sec. 1, Ch. 250, L. 1947; amd. Sec.  
 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138,  
 L. 1951; amd. Sec. 1, Ch. 200, L. 1957.

**Amendment**

The 1957 amendment raised all grades  
 and price listings. For section prior to  
 amendment see parent volume.

**16-1204. Letterheads.**

	250	500	1000	Add'l.
				1000
8½ x 7-16 or 20, Grade 35	\$10.25	\$12.05	\$15.10	\$ 6.25
8½ x 7-16 or 20, Grade 60	10.75	13.10	17.15	8.15
8½ x 11-16 or 20, Grade 35	11.25	13.15	16.95	7.40
8½ x 11-16 or 20, Grade 60	12.50	14.75	20.20	10.00

History: En. Sec. 4, Ch. 118, L. 1937;  
 amd. Sec. 2, Ch. 250, L. 1947; amd. Sec. 1,  
 Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.  
 1951; amd. Sec. 2, Ch. 200, L. 1957.

**Amendment**

The 1957 amendment raised all grades  
 and price listings. For section prior to  
 amendment see parent volume.

**16-1205. Legal blanks.**

	250	500	1000	Add'l.
				1000
7 x 8½, printed one side	\$11.00	\$12.95	\$16.20	\$ 8.55
7 x 8½, printed two sides	17.00	19.30	23.10	9.10
8½ x 14, printed one side	16.40	19.15	24.10	10.00
8½ x 14, printed two sides	22.90	26.05	31.60	11.10
8½ x 28, printed one side	33.30	38.20	47.60	18.75
8½ x 28, printed two sides	44.40	49.60	59.20	22.20

History: En. Sec. 5, Ch. 118, L. 1937;  
 amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec.  
 1, Ch. 138, L. 1951; amd. Sec. 3, Ch. 200,  
 L. 1957.

**Amendment**

The 1957 amendment raised the price  
 listings. For section prior to amendment  
 see parent volume.

**16-1208. Tax receipts in quintuple and more or less copies.** Perforated, gathered, numbered, different color paper for each sheet, bound in books of 50 sets each complete.

	500 or Less	1000	2000	3000	Add'l. 1000
Size 8½ x 11 -----	\$57.65	\$85.20	\$141.75	\$194.25	\$55.10
If additional sheet, add -----	4.15	7.55	13.05	18.55	5.50
Add for extra color---	3.40	7.65	10.00	13.40	3.40
If statement printed on other side add---	5.05	9.65	13.05	16.50	3.40
Size 9¼ x 11⅞ or 8½ x 14 -----	67.20	98.00	160.10	221.60	61.60
If additional sheet add	5.50	8.90	14.40	20.60	6.55
Add for extra color---	4.15	7.20	10.65	14.05	3.40
If statement printed on other side add---	6.90	10.35	13.75	17.15	3.40
Size 10¾ x 16¾ or 11 x 17 -----	87.90	125.45	202.60	277.90	75.30
If additional sheet add	7.20	11.60	18.15	27.25	8.15
Add for extra color---	4.85	7.90	11.35	14.20	4.15
If statement printed on back add -----	7.60	11.00	13.85	17.85	4.15

To ascertain price on more than five (5) copies (quintuple) add for each additional sheet: for less than five (5) copies, deduct for each sheet at rate set forth above for sizes specified.

**History:** En. Sec. 8, Ch. 118, L. 1937; amd. Sec. 5, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 4, Ch. 200, L. 1957.

**Amendment**

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

**16-1210. Imprinting corner cards on government stamped envelopes and printing post cards, stock furnished.**

	500	1000	2000	3000	Add'l. 1000
Envelopes -----	\$ 6.85	\$ 8.35	\$11.25	\$14.10	\$ 3.85
Post Cards, 1 side printed -----	7.65	9.55	13.45	17.35	3.75
Both sides printed---	13.25	17.30	24.70	32.10	7.25

**History:** En Sec. 10, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 5, Ch. 200, L. 1957.

**Amendment**

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

**16-1212. Special ruled and printed forms.** Prices apply to both sides ruled different with deductions for ruling and printing the same both sides or rule and printed one side only. Prices include punching for loose leaf

holders with rings or posts and green edging of sheets. Numbering of guide lines printed along binding edge of sheet, add one dollar and fifty cents (\$1.50) for each guide line.

### 8½ x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 37.35	\$ 44.05	\$ 55.75	\$ 19.40
Grade 60-32 Sub. -----	37.65	44.75	57.10	22.55
Grade 110-36 Sub. -----	40.45	50.45	68.35	33.85
Deduct if both sides alike -----	6.05	5.95	5.80	.30
Deduct if printed and ruled, 1 side only -----	9.35	10.30	12.10	3.00

### 8½ x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 43.45	\$ 50.75	\$ 63.95	\$ 24.00
Grade 60-32 Sub. -----	43.90	51.55	65.60	25.80
Grade 110-36 Sub. -----	47.40	58.80	79.85	40.10
Deduct if both sides ruled and printed alike -----	8.80	8.70	8.50	.30
Deduct if ruled and printed, 1 side only -----	11.20	12.10	13.90	3.35

### 9¼ x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 48.30	\$ 57.20	\$ 73.30	\$ 31.70
Grade 60-32 Sub. -----	48.95	58.35	75.70	31.15
Grade 110-36 Sub. -----	54.10	68.35	95.40	53.05
Deduct if both sides ruled and printed alike -----	8.80	8.70	8.50	.30
Deduct if ruled and printed, 1 side only -----	11.20	12.10	13.90	3.35

### 9½ x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 39.30	\$ 46.60	\$ 59.80	\$ 23.40
Grade 60-32 Sub. -----	39.65	47.45	61.50	25.00
Grade 110-36 Sub. -----	43.15	54.35	75.25	38.90
Deduct if both sides ruled and printed alike -----	6.65	6.55	6.40	.30
Deduct if ruled and printed, 1 side only -----	9.70	10.60	12.40	3.00

## 9½ x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 66.00	\$ 77.75	\$100.75	\$ 41.70
Grade 60-32 Sub. -----	66.85	79.50	102.70	45.05
Grade 110-36 Sub. -----	73.80	93.25	130.20	72.60
Deduct if both sides ruled and printed alike -----	13.70	13.45	13.20	.30
Deduct if ruled and printed, 1 side only -----	16.70	17.90	20.30	6.70

## 10½ x 16 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 53.40	\$ 63.25	\$ 81.10	\$ 33.25
Grade 60-32 Sub. -----	54.15	64.40	83.60	35.75
Grade 110-36 Sub. -----	59.30	74.60	103.80	52.25
Deduct if both sides ruled and printed alike -----	10.60	10.50	10.30	.60
Deduct if ruled and printed, 1 side only -----	13.00	14.20	16.40	3.30

## 11 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 46.40	\$ 55.35	\$ 71.40	\$ 31.60
Grade 60-32 Sub. -----	57.05	56.55	73.90	33.90
Grade 110-36 Sub. -----	52.15	66.50	93.55	53.00
Deduct if both sides ruled and printed alike -----	8.20	8.10	7.20	.30
Deduct if ruled and printed, 1 side only -----	9.70	10.60	12.40	3.35

## 11 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 56.05	\$ 66.00	\$ 84.90	\$ 31.10
Grade 60-32 Sub. -----	56.80	67.40	87.75	38.20
Grade 110-36 Sub. -----	62.30	78.60	110.20	60.60
Deduct if both sides ruled and printed alike -----	11.30	11.15	11.00	.60
Deduct if ruled and printed, 1 side only -----	13.70	14.90	17.00	3.65



11¼ x 24½ TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 74.40	\$ 88.00	\$113.30	\$ 46.40
Grade 60-32 Sub. ....	75.55	90.10	117.50	50.55
Grade 110-36 Sub. ....	83.95	107.00	151.20	84.25
Deduct if both sides ruled and printed alike .....	15.20	15.00	14.75	.60
Deduct if ruled and printed, 1 side only .....	17.90	19.40	21.85	3.65

12 x 9½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 37.95	\$ 45.25	\$ 58.40	\$ 23.50
Grade 60-32 Sub. ....	38.30	46.10	60.15	25.20
Grade 110-36 Sub. ....	41.55	53.00	73.90	38.95
Deduct if both sides ruled and printed alike .....	6.40	6.30	6.20	.30
Deduct if ruled and printed, 1 side only .....	9.45	10.30	12.10	3.05

12 x 19 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 62.70	\$ 74.55	\$ 96.10	\$ 39.90
Grade 60-32 Sub. ....	63.60	76.20	99.45	43.30
Grade 110-36 Sub. ....	70.50	89.95	127.00	70.80
Deduct if both sides ruled and printed alike .....	13.10	12.90	12.60	.30
Deduct if ruled and printed, 1 side only .....	16.10	17.30	19.70	3.35

12 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 73.45	\$ 87.00	\$112.00	\$ 46.00
Grade 60-32 Sub. ....	74.60	89.20	116.25	50.20
Grade 110-36 Sub. ....	83.05	97.40	149.65	83.60
Deduct if both sides ruled and printed alike .....	14.95	14.75	14.50	.60
Deduct if ruled and printed, 1 side only .....	17.30	18.80	21.25	3.65

## 12 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 94.75	\$113.50	\$146.10	\$ 60.60
Grade 60-32 Sub. -----	96.00	116.00	151.20	65.90
Grade 110-36 Sub. -----	106.45	136.90	193.05	107.60
Deduct if both sides ruled and printed alike -----	23.10	22.90	22.70	.60
Deduct if ruled and printed, 1 side only -----	24.10	25.45	28.80	5.70

## 14 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 61.65	\$ 72.30	\$ 94.80	\$ 40.05
Grade 60-32 Sub. -----	62.40	74.90	98.30	43.65
Grade 110-36 Sub. -----	69.75	89.25	127.15	72.10
Deduct if both sides ruled and printed alike -----	12.80	12.60	12.35	.30
Deduct if ruled and printed, 1 side only -----	14.65	16.10	18.50	3.35

## 14 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 77.50	\$ 92.20	\$119.95	\$ 53.75
Grade 60-32 Sub. -----	78.85	94.60	124.90	58.65
Grade 110-36 Sub. -----	88.50	114.10	163.60	97.35
Deduct if both sides ruled and printed alike -----	18.00	17.90	17.65	.60
Deduct if ruled and printed, 1 side only -----	19.45	21.30	24.00	4.50

## 14 x 34 TOTAL OF 20 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$111.75	\$131.90	\$170.35	\$ 74.85
Grade 60-32 Sub. -----	113.55	135.45	177.45	81.80
Grade 110-36 Sub. -----	127.95	163.90	234.40	138.85
Deduct if both sides ruled and printed alike -----	26.70	26.50	26.30	.60
Deduct if ruled and printed, 1 side only -----	28.50	30.30	33.60	5.75

17 x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 51.25	\$ 60.50	\$ 79.30	\$ 34.95
Grade 60-32 Sub. ....	52.10	62.30	82.10	37.75
Grade 110-36 Sub. ....	57.60	73.45	104.55	60.20
Deduct if both sides ruled and printed alike .....	10.70	10.55	10.40	.30
Deduct if ruled and printed, 1 side only .....	12.40	13.60	15.80	3.30

17 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 57.90	\$ 69.40	\$ 90.50	\$ 39.70
Grade 60-32 Sub. ....	58.70	71.05	94.00	43.30
Grade 110-36 Sub. ....	65.90	84.85	122.85	71.70
Deduct if both sides ruled and printed alike .....	12.50	12.30	12.05	.30
Deduct if ruled and printed, 1 side only .....	13.70	14.90	17.30	3.35

17 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 81.90	\$ 97.80	\$128.25	\$ 59.00
Grade 60-32 Sub. ....	83.30	100.70	133.90	64.60
Grade 110-36 Sub. ....	94.60	123.15	178.80	119.50
Deduct if both sides ruled and printed alike .....	18.85	18.70	18.55	.60
Deduct if ruled and printed, 1 side only .....	21.25	23.05	25.80	4.50

17 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$102.00	\$123.85	\$162.85	\$ 74.20
Grade 60-32 Sub. ....	103.65	127.40	169.95	81.15
Grade 110-36 Sub. ....	118.05	155.85	226.90	138.20
Deduct if both sides ruled and printed alike .....	24.30	24.10	23.90	.60
Deduct if ruled and printed, 1 side only .....	26.10	27.90	31.20	5.75

## 17 x 46 TOTAL OF 28 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$161.90	\$202.05	\$269.40	\$119.65
Grade 60-32 Sub. ....	164.65	207.85	277.70	131.05
Grade 110-36 Sub. ....	188.80	254.25	371.40	224.05
Deduct if both sides ruled and printed alike .....	40.75	40.30	39.85	.90
Deduct if ruled and printed, 1 side only .....	40.60	42.40	47.40	9.40

## 18 x 11½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 56.50	\$ 67.70	\$ 87.90	\$ 37.45
Grade 60-32 Sub. ....	52.30	69.25	91.05	40.60
Grade 110-36 Sub. ....	68.00	81.75	115.95	65.40
Deduct if both sides ruled and printed alike .....	11.60	11.40	11.05	.30
Deduct if ruled and printed, 1 side only .....	14.00	15.50	17.30	3.35

## 18 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$ 94.45	\$114.85	\$150.90	\$ 67.70
Grade 60-32 Sub. ....	95.90	118.00	157.30	73.85
Grade 110-36 Sub. ....	108.45	142.90	207.10	123.85
Deduct if both sides ruled and printed alike .....	23.70	23.50	23.30	.60
Deduct if ruled and printed, 1 side only .....	24.90	26.70	30.00	5.75

## 18 x 46 TOTAL OF 32 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. ....	\$170.30	\$209.10	\$276.60	\$127.95
Grade 60-32 Sub. ....	173.50	215.30	289.90	140.70
Grade 110-36 Sub. ....	198.00	264.70	389.25	240.55
Deduct if both sides ruled and printed alike .....	47.70	47.60	47.50	1.20
Deduct if ruled and printed, 1 side only .....	46.70	48.80	55.50	10.75



## 19 x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 59.00	\$ 70.70	\$ 94.60	\$ 39.90
Grade 60-32 Sub. -----	59.85	72.40	95.55	43.30
Grade 110-36 Sub. -----	66.75	86.20	123.15	70.80
Deduct if both sides ruled and printed alike -----	11.90	11.70	11.35	.30
Deduct if ruled and printed, 1 side only -----	14.60	16.10	17.90	3.35

## 19 x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 99.60	\$121.10	\$159.45	\$ 72.15
Grade 60-32 Sub. -----	101.30	124.50	166.20	78.90
Grade 110-36 Sub. -----	115.10	152.00	221.20	133.65
Deduct if both sides ruled and printed alike -----	24.00	23.80	23.60	.60
Deduct if ruled and printed, 1 side only -----	25.50	27.30	30.60	5.75

## 20 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 68.85	\$ 82.40	\$108.15	\$ 48.00
Grade 60-32 Sub. -----	69.85	84.50	112.35	53.35
Grade 110-36 Sub. -----	78.10	101.50	146.05	87.10
Deduct if both sides ruled and printed alike -----	16.15	16.00	15.85	.30
Deduct if ruled and printed, 1 side only -----	16.40	17.00	19.70	4.55

## 20 x 28 TOTAL OF 18 COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$114.85	\$137.10	\$180.70	\$ 83.85
Grade 60-32 Sub. -----	116.95	141.40	189.45	92.20
Grade 110-36 Sub. -----	133.90	175.05	256.45	159.55
Deduct if both sides ruled and printed alike -----	26.10	25.90	25.70	.60
Deduct if ruled and printed, 1 side only -----	27.30	29.10	32.40	5.75

History: En. Sec. 12, Ch. 118, L. 1937;  
amd. Sec. 8, Ch. 250, L. 1947; amd. Sec. 1,  
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.  
1951; amd. Sec. 6, Ch. 200, L. 1957.

**Amendment**

The 1957 amendment raised grade and  
price listings. For section prior to amend-  
ment see parent volume.

**16-1213. Bound books.**

Bound books, ruled, printed and paged on 36 Sub. No. 1, 100% rag ledger.  
Patent back, flat opening. Complete, including lettering back or side title.

The first dimension listed is the binding margin. When greater or  
intermediate lengths of sheets are furnished with a binding size as listed,  
the difference between two given lengths is added or subtracted in the cor-  
rect proportion to either of the given lengths to cover the length of sheet  
actually furnished. When an intermediate binding size is furnished, the  
next larger binding size shall be used.

**SIZE 10½ x 16—7 UNIT COLUMNS TO PAGE**

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 82.55	\$ 88.65	\$ 95.05	\$ 97.95	\$104.40
¾ Russia, Printed Page-----	92.15	98.15	104.15	105.05	114.00
Full Russia, Printed Head-----	95.30	101.35	107.75	111.60	117.25
Full Russia, Printed Page-----	104.95	110.90	117.45	121.30	126.80
Add for folio printed head	\$11.20				
Add for folio printed page	\$20.75				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.40				

**SIZE 11½ x 18—8 UNIT COLUMNS TO PAGE**

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 89.95	\$ 96.00	\$102.65	\$106.15	\$112.20
¾ Russia, Printed Page-----	101.65	107.75	114.25	117.85	123.90
Full Russia, Printed Head-----	102.20	108.15	114.60	118.45	123.95
Full Russia, Printed Page-----	113.85	119.85	126.20	130.15	134.30
Add for folio printed head	\$11.70				
Add for folio printed page	\$23.35				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.55				

**SIZE 12 x 19 OR 14 x 17—8 UNIT COLUMNS TO PAGE**

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 92.35	\$ 98.60	\$105.15	\$108.75	\$114.75
¾ Russia, Printed Page-----	105.55	111.80	118.30	121.95	128.00
Full Russia, Printed Head-----	104.75	111.10	117.65	121.60	127.25
Full Russia, Printed Page-----	117.90	124.15	130.80	134.80	140.40
Add for folio printed head	\$12.15				
Add for folio printed page	\$25.35				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.55				

## SIZE 14 x 8½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 75.65	\$ 81.55	\$ 88.45	\$ 91.70	\$ 97.65
¾ Russia, Printed Page-----	89.35	95.20	102.10	105.45	111.15
Full Russia, Printed Head-----	85.55	91.30	98.15	101.70	107.20
Full Russia, Printed Page-----	101.90	105.05	111.85	115.45	121.50
Add for folio printed head	\$8.60				
Add for folio printed page	\$22.75				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.40				

## SIZE 14 x 20—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 96.65	\$103.10	\$110.65	\$113.90	\$120.90
¾ Russia, Printed Page-----	111.85	118.30	125.85	129.10	136.10
Full Russia, Printed Head-----	111.15	117.45	124.75	128.75	134.60
Full Russia, Printed Page-----	126.25	132.60	139.95	143.85	149.90
Add for folio printed head	\$12.60				
Add for folio printed page	\$27.95				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

## SIZE 16 x 10½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 89.10	\$ 91.90	\$100.65	\$104.50	\$108.15
¾ Russia, Printed Page-----	99.40	107.20	115.95	119.85	127.60
Full Russia, Printed Head-----	96.70	104.45	113.15	118.45	124.75
Full Russia, Printed Page-----	111.95	119.65	128.35	133.70	139.95
Add for folio printed head	\$10.60				
Add for folio printed page	\$25.85				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

## SIZE 16 x 21—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$113.10	\$123.25	\$134.30	\$139.50	\$150.55
¾ Russia, Printed Page-----	131.35	141.50	152.55	157.70	168.80
Full Russia, Printed Head-----	130.60	140.65	151.70	159.75	167.70
Full Russia, Printed Page-----	148.85	158.85	169.90	177.95	185.95
Add for folio printed head	\$13.20				
Add for folio printed page	\$31.45				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$3.75				

## SIZE 17 x 14 OR 19 x 12—6 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$ 91.95	\$ 99.85	\$108.80	\$112.75	\$121.70
$\frac{3}{4}$ Russia, Printed Page-----	110.25	118.10	127.05	131.05	139.95
Full Russia, Printed Head-----	104.20	112.10	121.00	127.60	133.90
Full Russia, Printed Page-----	122.45	123.85	139.30	145.85	152.15
Add for folio printed head	\$11.70				
Add for folio printed page	\$30.10				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

## SIZE 17 x 28—10 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head ----	\$135.40	\$146.30	\$158.30	\$163.80	\$171.70
$\frac{3}{4}$ Russia, Printed Page-----	157.70	168.60	180.55	186.10	198.00
Full Russia, Printed Head-----	154.50	165.25	177.45	186.15	194.95
Full Russia, Printed Page-----	176.80	187.85	199.75	208.50	217.20
Add for folio printed head	\$14.15				
Add for folio printed page	\$36.55				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$4.00				

## SIZE 18 x 11½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$ 90.15	\$ 98.00	\$107.00	\$110.45	\$124.95
$\frac{3}{4}$ Russia, Printed Page-----	107.90	115.85	124.40	128.20	137.55
Full Russia, Printed Head-----	102.10	109.90	118.65	124.95	131.15
Full Russia, Printed Page ----	119.90	127.65	136.35	142.70	149.00
Add for folio printed head	\$11.15				
Add for folio printed page	\$28.85				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.35				

## SIZE 18 x 23—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$122.45	\$132.85	\$144.75	\$149.40	\$160.70
$\frac{3}{4}$ Russia, Printed Page-----	144.00	154.40	165.70	170.80	182.20
Full Russia, Printed Head-----	141.85	152.10	163.50	171.65	179.80
Full Russia, Printed Page-----	164.60	173.60	184.95	193.10	201.25
Add for folio printed head	\$13.70				
Add for folio printed page	\$34.95				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$3.90				



## SIZE 19 x 24—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$127.25	\$137.75	\$149.25	\$154.40	\$165.60
$\frac{3}{4}$ Russia, Printed Page-----	150.00	160.55	172.00	177.80	162.50
Full Russia, Printed Head-----	146.50	157.10	170.55	177.60	185.20
Full Russia, Printed Page-----	169.35	179.80	191.35	199.70	207.95
Add for folio printed head	\$14.70				
Add for folio printed page	\$37.50				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$4.00				

## SIZE 21 x 16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$108.40	\$118.30	\$129.35	\$134.25	\$145.20
$\frac{3}{4}$ Russia, Printed Page-----	130.20	140.15	151.05	156.05	167.00
Full Russia, Printed Head-----	125.85	135.60	146.25	154.10	161.90
Full Russia, Printed Page-----	147.55	157.45	168.15	175.95	183.75
Add for folio printed head	\$12.60				
Add for folio printed page	\$34.45				
Add for each printed guide line	\$1.95				
Add for index ruled	\$10.40				
Add for index through book	\$4.05				

## SIZE 28 x 17—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$124.00	\$134.30	\$146.25	\$150.25	\$161.45
$\frac{3}{4}$ Russia, Printed Page-----	154.45	164.70	176.65	180.75	191.90
Full Russia, Printed Head-----	143.20	153.65	165.50	170.15	181.80
Full Russia, Printed Page-----	173.60	184.10	195.90	200.60	212.20
Add for folio printed head	\$13.20				
Add for folio printed page	\$43.70				
Add for each printed guide line	\$1.95				
Add for index ruled	\$10.85				
Add for index through book	\$4.00				

History: En. Sec. 13, Ch. 118, L. 1937;  
amd. Sec. 9, Ch. 250, L. 1947; amd. Sec. 1,  
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.  
1951; amd. Sec. 7, Ch. 200, L. 1957.

## Amendment

The 1957 amendment raised all price  
listings. For section prior to amendment  
see parent volume.

## 16-1214. Size 18 x 11½ record books only.

Loose Leaf Style With Binder

No. Pages	560	640
Marginal record ruled stock form grade 110, 36 Sub.		
Full Russia stock ruled not printed -----	\$64.20	\$68.20
Full Russia, Printed Head -----	71.80	76.05
Full Russia, Printed Page -----	91.80	91.10

Add for folio printed head -----	\$ 4.50
Add for folio printed page -----	\$24.50
Add for A-Z index -----	\$ 7.55
Loose leaf record binders only, full Russia, letter with back title 7 or 8 quire capacity, each-----	\$42.50

**History:** En. Sec. 14, Ch. 118, L. 1937;  
amd. Sec. 10, Ch. 250, L. 1947; amd. Sec.  
1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138,  
L. 1951; amd. Sec. 8, Ch. 200, L. 1957.

**Amendment**

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

**16-1217. Stock forms without county name.**

Budget form CB-2—per 100-----		\$ 7.15
Budget form CB-3—per 100-----		7.15
Budget form CB-4—per 100-----		7.35
Budget form CB-5—per 100-----		8.50
Budget form CB-6—per 100-----		8.50
Budget form CB-7—per 100-----		22.00
Justice docket, size 320 pages, each-----		\$30.00
Report of justice fees received, size 14 x 17, ruled and printed one side, per 100-----		7.50
Teachers' registers, six week, each-----		\$ 1.25
District school budget applications, form 1-----	100	6.50
	Additional 100	5.50
High school budget application sheets-----	100	7.00
	Additional 100	6.00
Elementary and high school budget record sheets, ruled and printed one side, size 16¾ x 26-----	50	8.50
	Additional 100	14.75
School census reports-----	per 250	7.00
	per 500	12.00
Teachers' contracts-----	per 50	4.00
	per 100	5.50
Trustees' annual reports-----	per 50	6.00
	per 100	10.00
Teachers' reports-----	per 250	10.50
	per 500	15.00
Superintendent's or principal's reports-----	per 100	5.00
	Additional per 100	4.50

For 1-time Carbon and N.C.R. (carbonized  
paper forms) see paragraph 2, section 19.

**History:** En. Sec. 17, Ch. 118, L. 1937;  
amd. Sec. 13, Ch. 250, L. 1947; amd. Sec.  
1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138,  
L. 1951; amd. Sec. 9, Ch. 200, L. 1957.

**Amendment**

The 1957 amendment raised all price listings, substituted "Elementary and high

school budget record sheets, ruled and printed one side, size 16¾ x 26" for "District school budget record sheets, ruled and printed one side, size 13¾ x 21¾" and added the last classification pertaining to carbon.

**16-1219. Bids, how made—other prices.** Bids may be made either on the entire act, or bids may be made under each section. If each section is

bid upon separately the section must be bid upon in its entirety and not upon individual items in such section.

All other blank books, 1-time carbon, carbonized paper, and printed forms not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin Printing Catalog list, or by authority of the board of county commissioners at the price mutually agreed upon.

**History:** En. Sec. 19, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951; amd. Sec. 10, Ch. 200, L. 1957.

forms" for the words "and printing" and added the words "or by authority of the board of county commissioners at the price mutually agreed upon."

#### **Amendment**

The 1957 amendment in the second paragraph substituted the words "1-time carbon, carbonized paper, and printed

#### **Repealing Clause**

Section 11 of Ch. 200, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### **CHAPTER 16—RURAL IMPROVEMENT DISTRICTS**

- Section 16-1620. Form and terms of district warrants and bonds.  
 16-1629. Maintenance of lighting systems in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment.  
 16-1633. Rural special improvement district revolving fund.  
 16-1634. Moneys for fund—tax levy.  
 16-1635. Use of revolving fund—loans.  
 16-1636. Loan—lien—repayment.  
 16-1637. Excess moneys in revolving fund—transfer to general fund.  
 16-1638. Cancellation of record of extinguished liability accounts.

#### **16-1604. (4577) Protests against creation or extension of district, etc.**

##### **Operation and Effect**

Where city agrees to provide water for a special improvement district the city does not have the duty or the obligation to install at its own expense the water

mains necessary. *Crawford v. City of Billings*, 130 M 158, 297 P 2d 292, 295.

##### **References**

Cited or applied in *Crawford v. City of Billings*, 130 M 158, 297 P 2d 292, 297.

#### **16-1611. (4584) Assessment of property—apportionment of costs, etc.**

##### **References**

Cited or applied in *Crawford v. City of Billings*, 130 M 158, 297 P 2d 292, 298.

#### **16-1620. (4593) Form and terms of district warrants and bonds.**

(1). \* \* \* [Same as parent volume.]

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest not to exceed six per cent per annum from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered,

and shall bear the signatures of the chairman of the board of county commissioners and the county clerk. Said bonds shall be in denominations of one hundred dollars (\$100) or fractions, or multiples thereof; and may be issued in installments, and may extend over a period of not to exceed twenty (20) years.

(3). \* \* \* [Same as parent volume.]

**History:** En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260; L. 1959.

#### **Amendment**

The 1959 amendment in the second sentence of subd. (2) substituted the words

"bear the signatures of" for the words "be signed by" and deleted a proviso from the end of the third sentence of that subdivision which read "provided, however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners."

**16-1629. (4601.1) Maintenance of lighting systems in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment.** (1) When there has been, or shall be, created a rural improvement district, according to the provisions of sections 16-1601 through 16-1632, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, and no expense of construction is incurred by such rural improvement district in the installation of such lighting system, and it is necessary only to secure funds for the maintenance and operation of said system, and lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation, the board of county commissioners of such county may enter into a contract with other persons or corporation for the purpose of furnishing light to said rural improvement district.

(2) The cost of said service to said rural improvement district may be apportioned among the various tracts of land within said improvement district in proportion to the assessed value of said lands within said improvement district as determined by the said board of county commissioners, or at the option of said board, in proportion to the lineal front footage as determined by said board of each tract, any part of which is in the district, and abuts the street or roadway along which the lighting system is to be maintained, or in proportion to the area as determined by said board of that portion of each tract included in the district; and before the first Monday of September of each year, the board of county commissioners shall pass, and finally adopt, a resolution levying and assessing all the property within the district, an amount equal to the whole cost of maintaining said lighting system, and the same shall be proportioned against the several tracts of land in said district as provided herein. Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts, and the money collected therefor, shall be paid into a fund known as Special Improvement District No. \_\_\_\_\_ Maintenance Fund, the number of which shall correspond with the number of the special improvement district



in which the improvements so maintained are situated, and such funds shall be used to defray the expense of maintenance of said system, and for no other purpose. Any such assessment levied and made for any purpose in this section mentioned, together with all cost and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can be only extinguished by payment of such assessments, with all penalties, costs and interest.

**History:** En. Sec. 1, Ch. 58, L. 1933;  
am. Sec. 1, Ch. 217, L. 1959.

#### **Amendment**

The 1959 amendment in subd. (2) inserted the words "within said improvement district" the second time they appear and added that portion of the subdivision beginning with the words "or at the option" down to and including the words "each tract included in the district."

#### **Repealing Clause**

Section 2 of Ch. 217, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 217, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

**16-1633. Rural special improvement district revolving fund.** The board of county commissioners of any county in the state which may hereafter create any rural special improvement district or districts for any purpose shall, in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by resolution a fund to be known and designated as "Rural Special Improvement District Revolving Fund."

**History:** En. Sec. 1, Ch. 188, L. 1957.

#### **Title of Act**

An act relating to rural special improvement districts in counties; authorizing the creation, maintenance and use of a rural special improvement district revolving fund in any county for the purpose of se-

curing prompt payment of rural special improvement district bonds and warrants and interest thereon, and requiring levy of taxes when necessary for the financial requirements of such fund; and repealing all acts and parts of acts in conflict herewith.

**16-1634. Moneys for fund—tax levy.** For the purpose of providing funds for such revolving fund the board of county commissioners

(1) may in its discretion, from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered, and shall be, loans from such general fund to the revolving fund; and

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding rural special improvement district bonds and warrants.

**History:** En. Sec. 2, Ch. 188, L. 1957.

**16-1635. Use of revolving fund—loans.** (1) Whenever any rural special improvement district bond or warrant, or any interest thereon, shall hereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 2 [16-1634] of this act by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the board of county commissioners may so agree to and undertake, subject to the maximum limitations imposed by said section 2 [16-1634] of this act, which said undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered, or any interest thereon, remain unpaid.

**History:** En. Sec. 3, Ch. 188, L. 1957.

**16-1636. Loan—lien—repayment.** Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments, and on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the board of county commissioners, be transferred to the revolving fund; and after all the bonds and warrants issued on any rural special improvement district have been fully paid, all moneys remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund; if after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been transferred to the revolving fund there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

**History:** En. Sec. 4, Ch. 188, L. 1957.

**16-1637. Excess moneys in revolving fund—transfer to general fund.** Whenever there is in the revolving fund an amount in excess of the amount which the board deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the board may order such excess or any part thereof transferred to the general fund of the county.

**History:** En. Sec. 5, Ch. 188, L. 1957.

#### **Separability Clause**

Section 6 of Ch. 188, Laws 1957 read: "If any clause, sentence, paragraph, section, or other part whatsoever, of this act shall for any reason be held to be invalid or inoperative, the remainder of this act shall not thereby be invalidated, impaired, or in anywise affected, and such holding

shall be confined in its effect to the clause, sentence, paragraph, section, or other part of this act, directly adjudged to be invalid or inoperative."

#### **Repealing Clause**

Section 7 of Ch. 188, Laws 1957 read "All acts and parts of acts in conflict with this act are hereby repealed to the extent of such conflict."

**16-1638. Cancellation of record of extinguished liability accounts.** The board of county commissioners in any county in the state of Montana is hereby authorized to cancel of record all or any special rural improvement district liability accounts incurred or issued prior to February 25, 1929, the liability of which has been extinguished by reason of issuance of tax deed, or by the application of the statute of limitations or other laws of the state of Montana.

**History:** En. Sec. 1, Ch. 3, L. 1959.

#### **Title of Act**

An act relating to cancellation of record of special improvement district warrants and liability accounts in rural improvement districts in counties in which warrants or liability accounts were incurred or issued prior to February 25, 1929, and the liability of which has been extin-

guished by reason of issuance of tax deeds, by application of statute of limitations, or other laws of the state of Montana; and containing a repealing clause.

#### **Repealing Clause**

Section 2 of Ch. 3, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## **CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS**

Section 16-1802. Claims to be itemized—time for presenting.

**16-1801. (4604) County officer not to present certain claims, etc.**

#### **References**

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270, 272.

**16-1802. (4605) Claims to be itemized—time for presenting.** No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated; if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Claims against the county shall contain the following statement: "I certify that this claim is correct and just in all respects, and that payment or credit has not been received." Claims need not be verified by affidavit. Every claim against the county must be presented within a year after the last item accrued.

**History:** Ap. p. Sec. 23, p. 503, *Ban-nack Stat.*; re-en. Sec. 23, p. 437, *Cod. Stat.* 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887;

amd. Sec. 4286, *Pol. C.* 1895; re-en. Sec. 2945, *Rev. C.* 1907; re-en. Sec. 4605, *R. C. M.* 1921; amd. Sec. 1, Ch. 56, L. 1957. *Cal. Pol. C. Sec.* 4072.



**Amendment**

The 1957 amendment deleted the words "and is verified by affidavit showing that the account is just and wholly unpaid; and" which appeared between the words "stated" and "if" and added the second sentence.

**Operation and Effect**

Where, without first ascertaining the legal ownership thereof, a county appropriated a landowner's gravel, the landowner's action was not barred by the limitation of this section. *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270.

## CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS

Section 16-2026. Who are entitled to vote.

16-2033. Form and execution of bonds.

**16-2003. (4626) Lost bond or warrant.****Compiler's Note**

The word "bond" at the beginning of this section in the parent volume should be "board."

**16-2026. (4630.12) Who are entitled to vote.** In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment role for state, county and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-515, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

**History:** En. Sec. 12, Ch. 188, L. 1931; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959.

**Amendment**

The 1959 amendment, in the second paragraph, substituted the words "precinct registers" for the words "poll books."

**16-2033. (4630.19) Form and execution of bonds.** At the time of the sale of the bonds or at a meeting held thereafter the board of county commissioners shall prescribe the form of the bonds, whether amortization bonds or serial bonds, and of the coupons to be attached thereto. Each and every county bond and every coupon attached thereto must be signed by the chairman of the board of county commissioners and the county treasurer and attested by the county clerk, and each bond shall have the county seal affixed thereto.



**History:** En. Sec. 19, Ch. 188, L. 1931;  
amd. Sec. 8, Ch. 260, L. 1959.

**Amendment**

The 1959 amendment deleted a proviso from the end of this section which authorized facsimile signatures on coupons.

**CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS  
—GENERAL PROVISIONS**

- Section 16-2414. What offices to be kept open at county seat.  
16-2428. County recording, filing, etc. — photostatic or other mechanical process authorized.  
16-2429. Substitution of reproduction as public record.  
16-2430. Admissibility into evidence—preparation of enlarged copy.  
16-2431. Reproduction of record or document in duplicate—storage of copy—display of copy.

**16-2403. (4725) County officers enumerated.**

**Cross-Reference**

Group insurance for county officers and employees, authority, contribution, sec. 11-1024.

**16-2406. (4728) County and other officers, when elected, etc.**

**Appointment to Fill Vacancy**

Held: that county commissioners who appointed a person in November to the office of county attorney to take office in January was not acting to forestall the

rights and prerogatives of the board which would be in office in January since only one of the members would be new in January. State ex rel. Koch v. Lexcen, 131 M 161, 308 P 2d 974.

**16-2409. (4731) County and township officers may generally appoint, etc.**

**References**

Cited or applied in State v. Cockrell, 131 M 254, 309 P 2d 316, 319.

**16-2414. (4736) What offices to be kept open at county seat.** The sheriff, the county clerk, the clerk of the district court, the treasurer, and county attorney, the county auditor in counties where such officer is maintained and the county assessor must keep their offices open for the transaction of business from 8:00 o'clock A. M. until 5 o'clock P. M. continuously every day in the year except holidays and Saturdays, provided however, that the said offices enumerated herein shall be kept open on Saturdays and on holidays and at other times when the business of said offices requires them to be kept open.

The county superintendent of schools shall keep his office open from 8:00 o'clock A. M. until 5 o'clock P. M. every day when he is not engaged in the supervision of schools except on holidays and on Saturdays, provided that when the county superintendent has a deputy or clerk the office shall be kept open from 8:00 o'clock A. M. until 5 o'clock P. M. every day except holidays and except Saturdays. Said office shall be kept open at all times as business may require.

This act shall not apply to counties operating under the county manager plan.

**History:** En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R. C. M. 1921; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957. Cal. Pol. C. Sec. 4116.

**Amendment**

The 1957 amendment changed the office hours from 9:00 A. M. to 8:00 P. M. and authorized Saturday closing. Formerly the office hours were 9:00 A. M. to 5:00 P. M.

while the office could be closed Saturday afternoons only. For section prior to amendment see parent volume.

#### Repealing Clause

Section 2 of Ch. 199, Laws 1957 repealed all acts or parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 199, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

**16-2428. County recording, filing, etc.—photostatic or other mechanical process authorized.** Whenever any officer of any county is required or authorized by law to record, copy, file, recopy or replace any document, plat, paper, written instrument, or book, on file or of record in his office, he may do so by photostatic, microphotographic, microfilm, or other mechanical process which produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record, in accordance with standards not less than those now approved for permanent records by the National Bureau of Standards.

**History:** En. Sec. 1, Ch. 117, L. 1959.

#### Title of Act

An act to provide for the recordation of instruments by photostatic, microphotographic or microfilm; to provide for the disposal of original recorded instruments when reproductions are substituted

therefor; to provide for copies of destroyed or disposed of originals being admissible as evidence in courts and proceedings; to provide for identification, indexing and safekeeping of copies of instruments and to provide for a repealing clause.

**16-2429. Substitution of reproduction as public record.** Any such document, plat, paper, written instrument or book reproduced as provided in section 1 [16-2428] of this act, the original of which is not less than ten (10) years old, can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions substituted therefor as public records.

**History:** En. Sec. 2, Ch. 117, L. 1959.

**16-2430. Admissibility into evidence—preparation of enlarged copy.** The photostatic, microphotographic or microfilmed copy of any such record destroyed or disposed of as herein authorized, or a certified copy thereof, shall be admissible as evidence in any court or proceeding, and shall have the same force and effect as though the original record had been produced and proved. It shall be the duty of the custodian of such records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

**History:** En. Sec. 3, Ch. 117, L. 1959.

**16-2431. Reproduction of record or document in duplicate—storage of copy—display of copy.** Whenever any record or document is copied or reproduced by microphotographic or microfilm, or other mechanical process as herein provided it shall be made in duplicate, and the custodian thereof shall place one copy, the contents thereof being first duly identified and indexed, in a fireproof vault or fireproof storage place, and he shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size or for preparing, for persons entitled thereto, to copies of the record.

History: En. Sec. 4, Ch. 117, L. 1959.

**Repealing Clause**

Section 5 of Ch. 117, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS  
AND OTHER COUNTY FINANCES**

Section 16-2618. Deposit of public funds by county, city and town treasurers.

**16-2618. (4767) Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council, in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a time deposit as evidenced by certificates of deposit or deposits, which by agreement may not be withdrawn on less than thirty (30) days' notice by the said board of county commissioners, or city or town council; and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, or bonds guaranteed by such companies directly or indirectly, bonds and securities of the United States government and its dependents, bonds and warrants of the state of Montana or of any county, city, town or school district of Montana, Federal Land Bank bonds, bonds of other states and counties of other states, bonds of the Dominion of Canada, and Canadian Provinces, and other Canadian bonds guaranteed by the Canadian government or provinces thereof, personal bonds, as hereinafter provided, when accompanied by a sworn statement of the resources and liabilities of each of the sureties thereon, which shall be attached and made a part of the bond and bonds issued in the United States of America, which are quoted on the New York market, which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the



actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.

(5) Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.



(6) All interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) No personal bond shall be accepted except when such bond is for the purpose of renewing a personal bond now in effect, and from and after December 31, 1930, personal bonds shall not be considered as acceptable security; provided, further, that from and after the passage of this act, no new or additional deposit accounts shall be opened by any treasurer under any personal bond.

**History:** Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1, Ch. 50, L. 1957. Cal. Pol. C. Sec. 4161.

#### Amendment

The 1957 amendment in subd. (1) deleted a former second sentence which read "The sums so deposited shall bear uniform interest at the rate of not more than two per centum (2%) per annum, payable quarter annually"; deleted in the

present second sentence the words "on demand" which appeared between the words "deposits" and "together"; and after the words "together with interest" deleted the word "thereon" and added the words "on any time or savings deposits \* \* \*" to end of subd. (1); in subd. (6) inserted the words "or investments" between the words "deposits" and "shall" and in subd. (7) deleted the words "and approval" which appeared after the word "passage" in the proviso clause.

#### Repealing Clause

Section 2 of Ch. 50, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 27—SHERIFF

Section 16-2723. Mileage and expense of sheriff.

16-2709. (4781) Liability for refusing to levy or sell.

#### References

Cited or applied in *Stokke v. Graham*, 129 M 96, 281 P 2d 1025, 1027.

16-2723. (4885) Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or at the state reform school, or insane persons at the state insane asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state board of examiners or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided, that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the

discharge of his duties, both civil and criminal, the sheriff shall receive eleven cents (11¢) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive eleven cents (11¢) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

**History:** En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957.

effective upon its approval. Approved March 2, 1957.

#### **Amendment**

The 1957 amendment increased the rate received per mile from nine cents to eleven cents and in the last sentence deleted the words "team or horse hire, or" which appeared immediately before the words "any other expense."

#### **Compiler's Note**

Section 2 of Ch. 82, Laws 1957 amended sec. 25-226. Section 3 was a general repealing clause and section 4 made the act

### **CHAPTER 28—COUNTY JAILS**

**16-2803. (12468) County jails, by whom kept and for what used.**

#### **References**

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

**16-2807. (12472.1) Sheriff must receive federal prisoners.**

#### **References**

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

### **CHAPTER 29—COUNTY CLERK**

Section 16-2903. Recordation of certain instruments declared proper.

**16-2903. (4797) Recordation of certain instruments declared proper.** All instruments which have heretofore been filed for record in the several recorders' offices of the state of Montana, including all instruments which were offered for record pursuant to the previous section, which have been recorded in the offices of the recorders of the several counties by being correctly copied, separately, in large and well-bound, or to be bound, separate books, either in fair hand or by printing or by typewriting, or by the use of prepared blank forms, or by being so inscribed or printed on a single loose-leaf or leaves of a book, which leaf or leaves have heretofore or are to become a permanent part of any such book or volume, which, when completed, has or shall have the pages thereof securely locked, sealed, or bound into the volume, shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

All instruments included in section 1 above, may be recorded and preserved by use of microfilm in lieu of handwriting, typewriting, or printing, and the same shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

**History:** En. Sec. 1, Ch. 138, L. 1917; re-en. Sec. 4797, R. C. M. 1921; amd. Sec. 1, Ch. 116, L. 1959.

**Amendment**

The 1959 amendment added the second paragraph to this section.

**Compiler's Note**

The reference in the second paragraph to section 1 above apparently is a reference to the first paragraph of this section.

**Cross-Reference**

Recording of documents and records by photostatic or other process, secs. 16-2428 to 16-2431.

**16-2917. (4811) Duties of county clerk.**

**Cross-Reference**

Duties regarding issuance of identification cards showing age of 21 reached, secs. 4-506 to 4-508.

CHAPTER 31—COUNTY ATTORNEY

**16-3101. (4819) Duties of county attorney.**

**Power of Attorney General to Institute Actions in District Courts**

The statutes of this state do not authorize the institution of an action in the district courts by the attorney general on behalf of the state but rather they specifically state that such an action must be brought by the county attorney of the

county, however, under the common-law powers and duties of the attorney general he can institute such an action where the public interest is affected and the state is a party in interest. State ex rel. Olsen v. Public Service Commission, 129 M 106, 283 P 2d 594.

CHAPTER 32—COUNTY AUDITOR

**16-3211. (4833) Repealed.**

**Repeal**

This section (Sec. 10, p. 230, L. 1891), relating to the county auditor as county

superintendent of the poor, was repealed by Sec. 1, Ch. 51, Laws 1957.

CHAPTER 36—CONSTABLE AND JUSTICES OF THE PEACE

Section 16-3605. Justices not to practice law.

**16-3605. (4863) Justices not to practice law.** No justice of the peace shall practice law, draw contracts, conveyances, or other legal instruments or documents, nor shall they take any claim or bill for collection, nor act as a collection agent in any sense whatever, nor shall they perform any legal duties other than those prescribed by law as their official duties in the conduct of cases and proceedings in their courts. Any justice of the peace violating any of the provisions in this section shall be deemed guilty of a malfeasance in office, and shall forthwith be removed from his office of justice of the peace, and shall thereafter be disqualified from holding such office.

Provided, however, that a justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana except that such a justice of the peace,



his law partner, associate, member, associate or employee of firm of which he is a member shall not represent a party involved in a case filed or tried in his court or in any justice court located in the same township as his court, or which is appealed from said courts.

**History:** En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907; re-en. Sec. 4863, R. C. M. 1921; amd. Sec. 1, Ch. 228, L. 1959.

#### **Amendment**

The 1959 amendment added the proviso clause authorizing the practice of law

by justices of the peace in certain instances.

#### **Repealing Clause**

Section 2 of Ch. 228, Laws 1959 repealed all acts and parts of acts in conflict with the provisions of this act.

### **CHAPTER 37—DEPUTY COUNTY OFFICERS**

#### **16-3701. (4875) Number of deputies allowed.**

##### **History Correction**

**History:** En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec.

2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1953.

### **CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS**

#### **16-4101. Planning and zoning districts—commission—creation.**

##### **Cross-Reference**

Provisions of this section not applicable

where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

#### **16-4102. Development pattern.**

##### **Cross-Reference**

Provisions of this section not applicable

where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

#### **16-4103. Adoption of development district.**

##### **Cross-Reference**

Provisions of this section not applicable

where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

#### **16-4104. Surveys and examinations—powers.**

##### **Cross-Reference**

Provisions of this section not applicable

where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

#### **16-4105. Regulations—appeals—permits for construction.**

##### **Cross-Reference**

Provisions of this section not applicable

where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

#### **16-4106. Effect of act upon powers of incorporated communities, etc.**

##### **Cross-Reference**

Provisions of this section not applicable

where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

### **CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS**

- Section 16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents.  
 16-4402. City or town concurrence in resolution—notice.  
 16-4403. Protests and hearing.  
 16-4404. Resolution creating district.  
 16-4405. Description.  
 16-4406. Federal property omitted from assessment.



- 16-4407. Method of assessment.
- 16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment.
- 16-4409. Resolution—notice—hearing.
- 16-4410. Assessments as lien.
- 16-4411. Ex-officio commissioners of district—jurisdiction.
- 16-4412. Federal funds for local public works programs.
- 16-4413. Applicable provisions of rural improvement district act.

**16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents.** Whenever the public convenience and necessity may require in order to construct sanitary and/or storm sewer systems within any county, and which said sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners with the approval of the city or town council may create metropolitan sanitary and/or storm sewer districts.

Before creating any metropolitan sanitary and/or storm sewer district the board of county commissioners shall pass a resolution of intention so to do, which said resolution shall designate:

- (a) the proposed name of such district,
- (b) the necessity for the proposed district,
- (c) a general description of the territory or lands to be included within said district, giving the boundaries thereof,
- (d) the general character of the sanitary and/or storm sewer system and its proposed location,
- (e) the name of the engineer who is to have charge of the work, and
- (f) the estimated cost thereof.

**History:** En. Sec. 1, Ch. 185, L. 1957.

#### **Title of Act**

An act relating to the creation of metropolitan sanitary and storm sewer districts to serve inhabitants of both cities and incorporated towns and rural areas within counties; to empower the county commissioners to create metropolitan sanitary districts with the consent of city or town councils for the purpose of constructing sanitary or storm sewer systems; provid-

ing for the levy and collection of special assessments to pay for the same; and to adequately maintain same and extend payment of installments over any period not exceeding twenty years; to provide for the issuance of special improvement warrants or bonds in such metropolitan sanitary or storm sewer districts; providing for the powers and duties of the county commissioners in respect thereto; and repealing chapter 292, Laws of 1947.

**16-4402. City or town concurrence in resolution—notice.** Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur in the resolution of the board of county commissioners a copy of the resolution of concurrence shall be transmitted to the board of county commissioners.

If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district. However, if the city or town council concurs in the resolution of the board of county commissioners, the board must give notice of the passage of its resolutions of intention, and of the concurrence therein by the city or town council, which notice must be published for ten consecutive days in a daily newspaper or

in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

**History:** En. Sec. 2, Ch. 185, L. 1957.

**16-4403. Protests and hearing.** At any time within thirty days after the date of the first publication of the passage of the resolution or intention, any owner of property liable to be assessed for said work may make written protest against the proposed work. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed work is made by the owners of more than fifty per cent of the area in the proposed district, no further proceedings shall be taken by the board of county commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The board of county commissioners may adjourn said hearing from time to time.

**History:** En. Sec. 3, Ch. 185, L. 1957.

**16-4404. Resolution creating district.** When no protests have been delivered to the county clerk within thirty days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, immediately thereupon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

**History:** En. Sec. 4, Ch. 185, L. 1957.

**16-4405. Description.** In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the metropolitan sanitary and/or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

**History:** En. Sec. 5, Ch. 185, L. 1957.

**16-4406. Federal property omitted from assessment.** Whenever any lot, piece or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement, or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the said board of county commissioners shall in the resolution of intention declare that the said lots, pieces or parcels of land or any of them shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the county from its general fund.

**History:** En. Sec. 6, Ch. 185, L. 1957.

**16-4407. Method of assessment.** To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of the improvements against the entire metropolitan sanitary district, and each lot or parcel of land assessed in such district is to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

**History:** En. Sec. 7, Ch. 185, L. 1957.

**16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment.** To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in said metropolitan sanitary and/or storm sewer districts may be spread over a term of not to exceed twenty (20) years, payment to be made in equal installments.

**History:** En. Sec. 8, Ch. 185, L. 1957.

**16-4409. Resolution—notice—hearing.** Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county



clerk, subject to inspection, shall be published in at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

**History:** En. Sec. 9, Ch. 185, L. 1957.

**16-4410. Assessments as lien.** Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

**History:** En. Sec. 10, Ch. 185, L. 1957.

**16-4411. Ex-officio commissioners of district—jurisdiction.** The board of county commissioners shall be ex-officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this act, and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof, and for the condition and maintenance of all publicly owned streets, alleys, land, parks or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

**History:** En. Sec. 11, Ch. 185, L. 1957.

**16-4412. Federal funds for local public works programs.** The board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

**History:** En. Sec. 12, Ch. 185, L. 1957.

**16-4413. Applicable provisions of rural improvement district act.** The provisions of sections 16-1607, 16-1608, 16-1609, 16-1610, 16-1615, 16-1616, 16-1619, 16-1620, 16-1621, 16-1622, 16-1623, 16-1624, 16-1625, 16-1626, 16-1627 and 16-1628, Revised Codes of Montana, 1947, pertaining to the



powers and duties of the county commissioners in rural improvement districts shall likewise apply under the provisions of this act.

**History:** En. Sec. 13, Ch. 185, L. 1957.

**Repealing Clause**

Section 14 of Ch. 185, Laws 1957 read "Chapter 292, Laws of 1947, is hereby repealed, providing however, that any

metropolitan sanitary sewer districts established under the provisions of chapter 292, Laws of 1947, shall be valid, and any obligations incurred thereunder shall in nowise be affected by the repeal of said chapter 292, Laws of 1947."

**CHAPTER 45—COUNTY WATER DISTRICTS**

- Section 16-4501. Organization of county water districts authorized.  
 16-4502. Organization of county water districts.  
 16-4503. Petition—boundaries of district—publication.  
 16-4504. Time of consideration—final hearing.  
 16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election.  
 16-4506. Election of directors—term of office.  
 16-4507. Nomination of officers.  
 16-4508. General law to govern.  
 16-4509. Officers subject to recall.  
 16-4510. Organization of board.  
 16-4511. Ordinances—enacting clause—compensation.  
 16-4512. General manager, secretary and auditor.  
 16-4513. Informality not to invalidate.  
 16-4514. Powers of district.  
 16-4515. Powers exercised by board.  
 16-4516. Duties of officers of board—depository of funds—officers' bonds.  
 16-4517. Bonded indebtedness.  
 16-4518. Election.  
 16-4519. Notice.  
 16-4520. Publication.  
 16-4521. Canvass of returns.  
 16-4522. Two-thirds vote necessary.  
 16-4523. Value of bonds issued.  
 16-4524. Power to construct works across streets, etc.—right of way through state lands.  
 16-4525. Water rates.  
 16-4526. Rate to pay operating expenses.  
 16-4527. Commissioners to levy water taxes.  
 16-4528. Levy and collection of tax.  
 16-4529. Initiative.  
 16-4530. Referendum.  
 16-4531. Adding to district.  
 16-4532. Definitions.  
 16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands.  
 16-4534. Directors may institute proceedings for exclusion—hearing—referendum.

**16-4501. Organization of county water districts authorized.** A county water district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

**History:** En. Sec. 1, Ch. 242, L. 1957.

**Title of Act**

An act to provide for the incorporation and organization and management of county water districts; to provide for the acquisition of water-rights or construc-

tion thereby of water-works; and for the acquisition of all property necessary therefor; and also to provide for the distribution and sale of water by said districts; providing for severability and an effective date.

**16-4502. Organization of county water districts.** The people of any county, or portion of a county, or city and county, whether such portion includes unincorporated territory or not, in the state of Montana, having a population of not less than three hundred (300) inhabitants, may organize a county water district under the provisions of this act by proceeding as herein provided.

**History:** En. Sec. 2, Ch. 242, L. 1957.

**16-4503. Petition—boundaries of district—publication.** A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of commissioners of the county in which the proposed water district is located, signed by the registered voters within the boundaries of the proposed water district, equal in number to at least ten per centum (10%) of the registered voters of the territory included in such proposed water district. Such petition shall set forth and describe the proposed boundaries of such water district, and shall pray that the same be incorporated under the provisions of this act, and the text of such petition shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in such county, together with a notice stating the time of the meeting at which same will be presented. The first publication shall be at least two (2) weeks before the time at which the petition is to be presented. When contained upon more than one (1) instrument, one (1) copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

**History:** En. Sec. 3, Ch. 242, L. 1957.

**16-4504. Time of consideration—final hearing.** With such publication there shall be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard. At such time the board of commissioners shall hear the petition and those appearing thereon together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district and may adjourn such hearing from time to time, not exceeding four (4) weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures, thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing said board shall make such changes in the proposed boundaries as may be deemed advisable and shall define and establish such boundaries, but said board shall not modify said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district; nor shall any lands which will not, in the judgment of said board, be benefited by such district be included within such proposed district. Any person whose lands are benefited by such district may upon his application, in the discretion of said board, have such lands included within said proposed district.

**History:** En. Sec. 4, Ch. 242, L. 1957.

16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election. Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners shall give notice of an election to be held in said proposed water district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words “——— county water district”), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in said county. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: “Shall the proposition to organize ——— county water district under (naming the chapter containing this act) of the acts of the ——— session of the Montana legislature and amendments thereto be adopted?” And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of electors under the general election laws of the state, and is the owner of taxable real property situated within the boundaries of the proposed district. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory included in such proposed water district shall be in favor of organizing such county water district, said board shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water district under the name theretofore designated, and the county clerk shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the county water district (naming it) has



been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated as a county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future.

**History:** En. Sec. 5, Ch. 242, L. 1957.

**16-4506. Election of directors—term of office.** At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the county water district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members. In all cases where the boundaries of such water district include any municipality or municipalities, said board of directors, in addition to said five (5) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such county water district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said water district, of one additional director, to be appointed by the said board of commissioners. Any director so elected or appointed shall be a qualified freeholder and a resident of said district. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such county water district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general water district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special water district election.

**History:** En. Sec. 6, Ch. 242, L. 1957.

**16-4507. Nomination of officers.** (1) The mode of nomination and election of all elective officers of such water district to be voted for at any water district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.



(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

### PETITION OF NOMINATION

#### Individual Certificate.

State of Montana

County of \_\_\_\_\_

} ss.

Prect. No. \_\_\_\_\_

I, the undersigned, certify that I do hereby join in a petition for the nomination of \_\_\_\_\_, whose residence is at \_\_\_\_\_ for the office of \_\_\_\_\_ of the \_\_\_\_\_ county water district to be voted for at the water district election to be held in the \_\_\_\_\_ county water district on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_; and I further certify that I am a qualified elector and freeholder residing within said district, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. \_\_\_\_\_ street, \_\_\_\_\_, and that my occupation is \_\_\_\_\_.

(Signed) \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

} ss.

\_\_\_\_\_, being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

\_\_\_\_\_  
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to \_\_\_\_\_, at \_\_\_\_\_, Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, nor, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such

office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than twenty-five (25) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall indorse thereon the date upon which the petition was presented to him.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition can not be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with

the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in the county in which such municipal water district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

#### GENERAL (OR SPECIAL) DISTRICT ELECTION

----- County Water District,  
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at municipal water district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected;



in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as herein-after provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said county water district.

(22) Informality not to invalidate. No informality in conducting county water district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act.

**History:** En. Sec. 7, Ch. 242, L. 1957.

**16-4508. General law to govern.** The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all water district elections, except as in this act otherwise provided; provided, however, that where a corporation owns taxable real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning taxable real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any water district election, including any water district bond election.

**History:** En. Sec. 8, Ch. 242, L. 1957;      **Amendment**  
amd. Sec. 1, Ch. 258, L. 1959.

The 1959 amendment added the first two provisos to this section.

**16-4509. Officers subject to recall.** Every incumbent of an elective office, whether elected by popular vote for a full term, or elected by the board of directors to fill a vacancy, or appointed by a mayor or by said board of commissioners for a full term, is subject to recall by the voters of any county water district organized under the provisions of this act, in accordance with the recall provisions of sections 11-3220 to 11-3227, Revised Codes of Montana, both inclusive, applicable to officers under the commission-manager plan.

**History:** En. Sec. 9, Ch. 242, L. 1957.

**16-4510. Organization of board.** The board of directors shall be the governing body of such county water district. It shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided; it shall choose one of its mem-



bers president, and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All legislative sessions of the board of directors whether regular or special shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings.

**History:** En. Sec. 10, Ch. 242, L. 1957.

**16-4511. Ordinances—enacting clause—compensation.** The board of directors shall act only by ordinance or resolution. The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the total members of the board. The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of \_\_\_\_\_ county water district as follows:" All resolutions and ordinances shall be signed by the president of the board of directors and attested by the secretary. Each of the members of the board of directors shall receive for each attendance at the meetings of the board ten dollars (\$10.00), and shall receive no other compensation. No director, however, shall receive pay for more than three (3) meetings in any calendar month. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

**History:** En. Sec. 11, Ch. 242, L. 1957.

**16-4512. General manager, secretary and auditor.** The board of directors shall at its first meeting, or as soon thereafter as practicable, appoint, by a majority vote, a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor. The general manager, secretary, and auditor, shall receive such compensation as the board of directors shall determine, and each shall serve at the pleasure of the board.

**History:** En. Sec. 12, Ch. 242, L. 1957.

**16-4513. Informality not to invalidate.** No informality in any proceeding or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any county water district, and any proceeding wherein the validity of such incorporation is denied shall be commenced within three (3) months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said county water district, and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestable.

**History:** En. Sec. 13, Ch. 242, L. 1957.

**16-4514. Powers of district.** Any county water district incorporated as herein provided shall have power:

- (1) To have perpetual succession;
- (2) Sue and be sued. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

(3) Adopt seal. To adopt a seal and alter it at pleasure;

(4) Hold property. To take by grant, purchase, gift, devise, or lease; to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;

(5) Acquire water-works. To construct, purchase, lease, or otherwise acquire, and to operate and maintain water-rights, water-works, canals, conduits, reservoirs, lands and rights useful or necessary to store, conserve, supply, produce, or convey water for household, domestic or other similar purposes for the benefit of the district;

(6) Store water. To store water for the benefit of the district; to conserve water for future use; to appropriate, acquire and conserve water and water-rights for the purposes of the district; to commence, maintain, intervene in and compromise, in the name of the district, and to assume the costs of any action or proceeding involving or affecting the ownership or use of waters or water-rights within the district used or useful for any purpose of the district or a benefit to any land situated therein; to commence, maintain, intervene in, defend and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants; and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger the inhabitants or lands of the district;

(7) Lease water-works. To lease of and from any person, firm, or public or private corporation with the privilege of purchase, or otherwise, existing water-rights, water-works, canals or reservoir systems; and to carry on and maintain the same; also to sell water, or the use thereof, for household or domestic use or other similar purposes; and whenever there is a surplus of water to sell or otherwise dispose of the same, to municipalities or towns or to consumers located within or without the boundaries of the district;

(8) Cooperate with United States. To cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902 and all acts amendatory thereof and supplementary thereto or any other act of Congress authorizing or permitting such cooperation or contract for purposes of construction of works necessary or appropriate for the purposes of the district or for the acquisition, purchase, extension, operation, or maintenance of such works, or for a water supply or for the assumption as principal or guarantor of indebtedness to the United States and to carry out and perform the terms of any contract so made;

(9) Borrow money. To borrow money and incur indebtedness and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof;

(10) Levy taxes. To cause taxes to be levied in the manner provided for herein for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided;

(11) Make contracts. To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers.

History: En. Sec. 14, Ch. 242, L. 1957.

**16-4515. Powers exercised by board.** The powers herein enumerated shall, except as herein otherwise provided, be exercised by the board of directors above provided for and elected and appointed as described herein.

History: En. Sec. 15, Ch. 242, L. 1957.

**16-4516. Duties of officers of board—depository of funds—officers' bonds.** The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The general manager shall have full charge and control of the maintenance, operation and construction of the water-works or water-works system of said water district, with full power and authority to employ and discharge all employees and assistants at pleasure, prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board of directors. The general manager shall report to the board of directors in accordance with such rules and regulations as they may adopt. The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three (3) members of the board of directors and by the general manager. The board of directors shall also designate a depository or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss, and who shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe. The general manager, secretary and auditor, and all other employees or assistants of said district who may be required so to do by the board of directors, shall give bonds to the district conditioned for the faithful performance of their duties as the board of directors from time to time may provide.

History: En. Sec. 16, Ch. 242, L. 1957.

**16-4517. Bonded indebtedness.** Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the maximum rate of interest to be paid, which shall not exceed seven per cent (7%) per annum, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957.



**16-4518. Election.** The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of directors to provide for holding such special election on the day so fixed, in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided.

**History:** En. Sec. 18, Ch. 242, L. 1957.

**16-4519. Notice.** Such board of directors shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of directors of the water district, boundaries of voting precincts, which shall include therein only the lands to be benefited, as stated in such resolution, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and two clerks in each precinct.

**History:** En. Sec. 19, Ch. 242, L. 1957.

**16-4520. Publication.** Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in the county wherein such water district is located, which newspaper shall be designated by the board of directors. Every qualified elector, owning taxable real property within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district.

**History:** En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959.

**Amendment**

The 1959 amendment substituted "in the county wherein such water district is located" for "in such water district";

deleted a provision which read "and if there is no newspaper printed in such water district, then in some newspaper of general circulation published in the county in which the district is situated" and substituted "owning taxable real property" for "residing."

**16-4521. Canvass of returns.** The returns of such election shall be made to and the votes canvassed by said board of directors on the first Monday following said election, and the results thereof ascertained and declared in accordance with the general election laws of the state, so far as they may be applicable, except as herein otherwise provided. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregularities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein, said election shall be called, managed and directed as is by law provided for general elections in this state applicable thereto, except as herein otherwise provided.

**History:** En. Sec. 21, Ch. 242, L. 1957.

**16-4522. Two-thirds vote necessary.** If from such returns it appears that more than two thirds of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of



any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

**History:** En. Sec. 22, Ch. 242, L. 1957.

**16-4523. Value of bonds issued.** Any bonds issued by any district organized under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.

**History:** En. Sec. 23, Ch. 242, L. 1957.

**16-4524. Power to construct works across streets, etc.—right of way through state lands.** The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said works may intersect or cross; provided, such works are constructed in such manner as to afford security for life and property, and said board of directors shall restore the crossings and intersections to their former state as near as may be, or in manner not to have impaired unnecessarily their usefulness. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state.

**History:** En. Sec. 24, Ch. 242, L. 1957.

**16-4525. Water rates.** The board of directors shall fix all water rates, and shall through the general manager collect the charges for the sale and distribution of water to all users.

**History:** En. Sec. 25, Ch. 242, L. 1957.

**16-4526. Rate to pay operating expenses.** The board of directors in the furnishing of water shall fix such rate as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due; it being the intention of this section to require the district to pay the interest and principal of its bonded debt from the revenues of the district.

**History:** En. Sec. 26, Ch. 242, L. 1957.

**16-4527. Commissioners to levy water taxes.** If, from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must, at least fifteen (15) days before the first day of the month in which the board of commissioners of the county, or city and county, in which such water district is located, is required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board of commissioners and to the auditor, respectively, an estimate in writing of the minimum amount of money required by the district for the payment of the principal or interest on any bonded debt as it becomes due, together with a description of the lands benefited thereby, as stated by the board of directors in the

resolution declaring the necessity to incur such bonded indebtedness, and also of the minimum amount of money required by the district for any other purpose in this section set forth, and the board of commissioners of such county or city and county must annually, at the time and in the manner of levying other county or city and county taxes and until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected, a tax sufficient for the payment thereof to be known as the "----- county water district bond tax"; and until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected a tax sufficient for the payment thereof to be known as the "----- county water district water tax."

When the minimum amount of money required for any purpose in this section enumerated has been determined, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the board of county commissioners, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district, in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

When the written estimate of the minimum amount of money required has been delivered to the board of commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof. Such notice shall be given:

(1) By posting notice thereof in five (5) public places within the boundaries of the lands upon which the tax is to be levied, and

(2) By publishing a copy of the notice for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in the county wherein the district is located.

(3) By forwarding registered mail, at least ten (10) days prior to the hearing provided for in paragraph (d) of this section, a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

The legislative assembly hereby finds, determines and declares that the giving of notice in accordance with paragraphs (1), (2) and (3) of this section is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in paragraph (d) of this section, and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

Such notice shall state:

(a) The amount of money required;

(b) The method of assessment which the board of commissioners intends to employ;

(c) The boundaries or description of the lands to be assessed; and

(d) The time when and the place where, the board of commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining thereto, which said hearing shall be had no less than fifteen (15) days after the last publication of the notice.

At the time and place designated for said hearing any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered and ruled upon by the board of commissioners. The board of commissioners may adjourn said hearing from time to time.

Where such tax is, for any reason, deemed unlawful by the person whose property is taxed, whether he has protested the same at the hearing above provided or not, he may pay the tax or the installments thereof under protest in the manner provided by section 84-4502, Revised Codes of Montana, 1947, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest, and for no other reasons and on no other grounds; provided, that all of the provisions of said section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

**History:** En. Sec. 27, Ch. 242, L. 1957;  
amd. Sec. 3, Ch. 258, L. 1959.

#### **Repealing Clause**

Section 4 of Ch. 258, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Separability Clause**

Section 5 of Ch. 258, Laws 1959 read "If any provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this law."

#### **Effective Date**

Section 6 of Ch. 258, Laws 1959 provided the act should be in effect from and after the date of passage and approval. Approved March 13, 1959.

#### **Amendment**

The 1959 amendment, in the second paragraph, deleted a phrase "where the water district is located more than one (1) mile from the boundary of an incorporated city or town" which appeared after the words "total area of all of the lands to be assessed; or"; substituted "taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district" for "the assessed value of the lots or parcels of land within said district" and added all the remaining portion of this section.

**16-4528. Levy and collection of tax.** Such taxes for the payment of any such bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district. All such taxes shall be collected at the same time and in the same manner and form as county taxes are collected, and when collected shall be paid to the district for which such taxes were levied and collected. If such taxes are levied for the payment of a bonded debt for the benefit of certain property within the district, as so stated in the resolution of the board of directors aforesaid, such taxes shall be a lien upon each lot or parcel of said property to the extent of the levy of said taxes upon said lot or parcel; and all taxes for other purposes shall



be a lien upon each lot or parcel of land within the entire area comprising the district, to the extent of the levy of said taxes upon said lot or parcel; and said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes. Such taxes if not paid shall become delinquent at the same time as do county taxes.

**History:** En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959.

#### **Amendment**

The 1959 amendment substituted the first part of the third sentence for one which formerly read: "Such taxes, if for the payment of a bonded debt, shall be a lien on all the property benefited thereby, as so stated in the resolution of

the board of directors aforesaid, and all taxes for other purposes shall be a lien on all the property in the territory comprising the district"; and added the last sentence.

#### **Repealing Clause**

Section 2 of Ch. 45, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**16-4529. Initiative.** Ordinances may be passed by the electors of any county water district organized under the provisions of this act in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

**History:** En. Sec. 29, Ch. 242, L. 1957.

**16-4530. Referendum.** Ordinances may be disapproved and thereby vetoed by the electors of any such county water district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

**History:** En. Sec. 30, Ch. 242, L. 1957.

**16-4531. Adding to district.** Any portion of a county or any municipality, or both, may be added to any county water district organized under the provisions of this act, at any time, upon petition presented in the manner therein provided for the organization of such water district, which petition may be granted by ordinance of the board of directors of such water district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such water district and in the proposed addition, at a general or special election held as herein provided, within seventy (70) days after the adoption of such ordinance. If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such water district is located. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate the territory named therein shall be deemed added to and form a part of said county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto.

**History:** En. Sec. 31, Ch. 242, L. 1957.



**16-4532. Definitions.** Nothing in this act shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or the supply of water to, or the acquisition thereof by counties or municipalities within this state. The term "municipality," as used in this act, shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such water districts. The term "county" shall be understood and construed to include "city and county." In municipalities in which there is no mayor the duty imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees or other chief executive of the municipality. The word "district" shall apply, unless otherwise expressed or used, to a water district formed under the provisions of this act, and the word "board" and the words "boards of directors" shall apply to the board of directors of such district.

**History:** En. Sec. 32, Ch. 242, L. 1957.

**16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands.** Any territory, included within any county water district formed under the provisions of this act, and not benefited in any manner by such district, or its continued inclusion therein, may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory. Said petition shall describe the territory sought to be excluded and shall set forth that such territory is not benefited in any manner by said county water district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district. Such petition shall be filed with the secretary of the water district and shall be accompanied by a deposit with such secretary of the sum of one hundred dollars (\$100.00), to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order hereinafter provided for, any unconsumed balance to be returned to the petitioner. Upon the filing of such petition with the secretary of the water district he shall call a meeting of the board of directors of the district at a time not less than twenty-five (25) days nor more than fifty (50) days after the filing of the petition and cause a notice of the filing of such petition to be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper within said district, if there be one, and if not, in some newspaper of general circulation published in the county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof, which shall be the regular meeting place of the board of directors of the district; provided, that the board may adjourn the hearing to a more convenient meeting place within the district. Any landowner or taxpayer within the

district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing. If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that such lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the board of directors shall make an order that such lands, or such portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. From the time of the making of such order the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county in which the district is situated and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

**History:** En. Sec. 33, Ch. 242, L. 1957.

**16-4534. Directors may institute proceedings for exclusion—hearing—referendum.** The board of directors of any county water district formed under the provisions of this act may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included, or which may not be benefited in any manner by their continued inclusion therein. Such proceedings shall be initiated by the board of directors by the passage of a resolution requiring all persons interested to appear and show cause before the board of directors, at a time and place specified, why such lands, describing them, should not be excluded from the district and fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing. Upon the passage of such resolution the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board of directors by its resolution hereinbefore mentioned shall be not less than twenty-five (25) days nor more than fifty (50) days after the passage of such resolution and the place of hearing so fixed shall be a convenient place within the district; provided that the final action of the board of directors under this section shall be subject to the referendum by the electors of the water district according to section 30 [16-4530] of this act.

**History:** En. Sec. 34, Ch. 242, L. 1957.

#### **Separability Clause**

Section 35 of Ch. 242, Laws 1957 read "Every section of this act and every part of each section is hereby declared to be

independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

**Effective Date**

Section 36 of Ch. 242, Laws 1957 provided the act should be in effect from and

after its passage and approval. Approved March 13, 1957.

## CHAPTER 46—DOG LICENSING

- Section 16-4601. Collar and license tag required.  
 16-4602. County commissioners may issue licenses—license year—application for license—application for kennel license.  
 16-4603. Fees—kennel license tags—use.  
 16-4604. Municipal license tag as compliance with act.  
 16-4605. Seizure and impounding of dogs running at large without tag.  
 16-4606. County commissioners to provide for impounding and disposition of dogs.  
 16-4607. County pound master—appointment—authority for contracts with humane societies or municipal corporations.  
 16-4608. Impounded dogs—disposition—dogs suspected of rabies or known to have bitten human or animal.  
 16-4609. Fee for impounding and keeping dog.  
 16-4610. Fees and charges as charge against county—payment by owner claiming dog.  
 16-4611. Failure of owner to pay pound fee constitutes abandonment.  
 16-4612. Disposition of license fees and fines.  
 16-4613. Violation constitutes misdemeanor.  
 16-4614. Liability of owner of dog for damages to livestock or poultry.  
 16-4615. "Owner" defined.

**16-4601. Collar and license tag required.** It shall be unlawful where this act applies for any person to own, harbor or keep any dog over the age of five (5) months, or to permit such a dog owned, harbored or controlled by him to run at large, unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner; provided, however, that it shall be lawful to remove such collar and license tag when such dog is under the immediate control of its owner or his agent.

**History:** En. Sec. 1, Ch. 280, L. 1959.

**Title of Act**

An act to protect livestock from injury by dogs; providing that it may be unlawful to keep a dog over the age of five (5) months without an identifying license tag; providing for the issuance of dog license tags and kennel licenses by county treasurers and the fees therefor; providing for the issuance of dog license tags by municipal corporations under the provisions of this act; providing for the impounding of unlicensed dogs running at large by law enforcement officers and a fee therefor; providing that county commissioners may provide for the impounding and disposition of dogs running at large contrary to the provisions of this act, and authorizing them to appoint a county pound master to enforce this act or to enter into contracts with others to perform such duties; providing that impounded dogs shall not be disposed of without notice to the owner, if known, or before seventy-two (72) hours have elapsed after

impounding nor, in the case of dogs suspected of rabies, before release by the county health officer; providing for the fixing of pound fees and charges by the board of county commissioners and the payment thereof from the county treasury or by the owner of such impounded dog; providing that failure of the owner of a dog to pay pound fees and charges after notice of impounding constitutes abandonment of the dog; providing that fees and fines collected under this act shall be paid into the county treasury for the enforcement of this act; providing that violation of this act shall constitute a misdemeanor; providing that the owner of livestock or poultry killed or injured by a dog or dogs may recover damages from the owner or owners thereof and that lack of knowledge of the dog's disposition or whereabouts shall constitute no defense to said action; defining the word "owner" in relation to dogs; providing that if any part of this act is adjudged invalid, inoperative or unconstitutional, such decision shall not affect,



impair or invalidate the remaining portions of this act; and providing for the repeal of all acts and parts of acts in conflict herewith.

**16-4602. County commissioners may issue licenses—license year—application for license—application for kennel license.** The board of county commissioners of any county in the state of Montana may provide for the annual issuance of serially numbered dog license tags, stamped with the name of the county and the year of issue, which shall be issued by the county treasurer to owners of dogs who make application and pay the dog license fee, or to owners of kennels who make application and pay the kennel license fee. The license year shall commence on the first day of July and end on the thirtieth day of the following June. Each application, except by a kennel owner, shall state the age, sex, color, and breed of the dog for which the license is desired and the address of the owner. An application for a kennel license shall state the name and address of the owner of the kennel. The term "kennel" shall mean any establishment wherein or whereon five (5) or more dogs are kept for the purpose of boarding, breeding, sale, sporting or commercial purposes.

**History:** En. Sec. 2, Ch. 280, L. 1959.

**16-4603. Fees—kennel license tags—use.** The county treasurer shall endorse upon the application for a dog license tax the number of the license tag issued. The fee for the issuance of a dog license tag shall be one dollar (\$1.00), but the board of county commissioners may increase the fee to not more than five dollars (\$5.00) if deemed advisable for proper administration of this act. The fee for issuance of a kennel license shall be five dollars (\$5.00), but the board of county commissioners may increase the fee to not more than twenty dollars (\$20.00) if deemed advisable for proper administration of this act. Upon issuance of a kennel license, the county treasurer shall deliver to the applicant ten (10) serially numbered license tags stamped with the name of the county and the year of issue. Such tags shall be made in a form so that they are readily distinguishable from individual license tags for that year. Such tags may be transferred from one dog to another within the kennel. The kennel owner shall retain such license tags when he sells or otherwise disposes of a dog. All applications for dog license tags and kennel licenses, endorsed with the numbers of the license tags issued thereunder, shall be kept on file in the office of the county treasurer open to public inspection.

**History:** En. Sec. 3, Ch. 280, L. 1959.

**16-4604. Municipal license tag as compliance with act.** Any dog license tag issued annually by any municipal corporation pursuant to an ordinance which substantially complies with this act and which provides for the wearing of the license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps or harbors the dog constitutes compliance with the licensing provisions of this act.

**History:** En. Sec. 4, Ch. 280, L. 1959.

**16-4605. Seizure and impounding of dogs running at large without tag.** Any dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant



to the provisions of this act, may be seized and impounded by any sheriff, deputy sheriff, policeman, game warden, county pound master or other law enforcement officer.

**History:** En. Sec. 5, Ch. 280, L. 1959.

**16-4606. County commissioners to provide for impounding and disposition of dogs.** The board of county commissioners of each county where this act applies shall provide for the taking up and impounding of all dogs found running at large contrary to the provisions of this act and for the killing in some humane manner or other disposition of any dog impounded.

**History:** En. Sec. 6, Ch. 280, L. 1959.

**16-4607. County pound master—appointment—authority for contracts with humane societies or municipal corporations.** The board of county commissioners may appoint a county pound master and fix the compensation for his services whose duties shall be to take up, impound and kill dogs under this act, and otherwise enforce the provisions of this act, or the board of county commissioners may enter into a contract with any humane society or other person, organization or association which will undertake to carry out the provisions of this act regarding the taking up, impounding and killing of dogs, and which shall give a proper bond in whatever amount may be fixed by the board of county commissioners for the faithful performance of the contract. The board of county commissioners may also enter into contracts with municipal corporations for the use by the county or by the municipal corporation of the impounding facilities of the other.

**History:** En. Sec. 7, Ch. 280, L. 1959.

**16-4608. Impounded dogs—disposition—dogs suspected of rabies or known to have bitten human or animal.** No dog impounded under the provisions of this act shall be killed or otherwise disposed of without notice to the owner, if he is known, and no dog so impounded shall be killed before seventy-two (72) hours have elapsed from the time of the taking up of the dog; provided, however, that any impounded dog suspected of having rabies or known to have bitten any human or animal, shall not be killed or otherwise disposed of until released by the county health officer or his agent.

**History:** En. Sec. 8, Ch. 280, L. 1959.

**16-4609. Fee for impounding and keeping dog.** The board of county commissioners shall fix the fee for impounding any dog and the amount to be paid for keeping the dog.

**History:** En. Sec. 9, Ch. 280, L. 1959.

**16-4610. Fees and charges as charge against county—payment by owner claiming dog.** The fees and pound charges for taking up and impounding and for keeping the dogs shall be a charge against the county treasury, to be paid as other claims against the county are paid; provided, however, that in any case where a dog so impounded is claimed by the owner, the fee for impounding and keeping the dog as fixed by the board of county commissioners, shall be paid by the owner to the person, or-

ganization or association having custody of the dog, to be retained by him or them, and no charge for fees pertaining to the dog shall be paid by the county.

**History:** En. Sec. 10, Ch. 280, L. 1959.

**16-4611. Failure of owner to pay pound fee constitutes abandonment.** The refusal or failure of the owner of any such dog to pay the pound fee and charges after due notification shall be held to be an abandonment of the dog by the owner.

**History:** En. Sec. 11, Ch. 280, L. 1959.

**16-4612. Disposition of license fees and fines.** All fees for the issuance of dog license tags, kennel licenses, and all fines collected under the provisions of this act shall be paid into the county treasury and shall be used to pay fees, salaries, costs, expenses, or any or all of them for the enforcement of this act.

**History:** En. Sec. 12, Ch. 280, L. 1959.

**16-4613. Violation constitutes misdemeanor.** Violation of any provision of this act shall constitute a misdemeanor.

**History:** En. Sec. 13, Ch. 280, L. 1959.

**16-4614. Liability of owner of dog for damages to livestock or poultry.** The owner of livestock or poultry injured or killed by any dog may recover as liquidated damages from the owner of the dog, the actual value of the animals killed or the value of the damages sustained by reason of the injuries as the case may be. If two or more dogs kept by two or more owners or keepers injure or kill any livestock or poultry at the same time, the owners or keepers of the dogs are jointly and severally liable for such damages. It shall be no defense to said action that the owner or keeper of the dog had no knowledge of the dog's whereabouts at or prior to the time when the dog injured or killed livestock or poultry or that the owner or keeper of the dog had no knowledge of the dog's disposition or inclination to worry, kill or injure livestock or poultry.

**History:** En. Sec. 14, Ch. 280, L. 1959.

**16-4615. "Owner" defined.** The word "owner" when used in this act in relation to property in, or possession of, dogs, shall include every person who owns, harbors or keeps a dog.

**History:** En. Sec. 15, Ch. 280, L. 1959.

#### **Separability Clause**

Section 16 of Ch. 280, Laws 1959 read "If any part of this act shall be adjudged invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate any other part of this act."

#### **Repealing Clause**

Section 17 of Ch. 280, Laws 1959 repealed all acts or parts of acts in conflict therewith.

## TITLE 17—DAMAGES AND RELIEF

### CHAPTER 1—RELIEF IN GENERAL

#### 17-102. (8658) Relief in case of forfeiture.

##### Essential Allegations

In an action involving rights of parties to written contract for sale of property where defendants sought to rescind contract, if the defendants could make out a case under this section, they should be permitted to do so and ought not to forfeit all of the money which they paid. To prevail on this ground they were required to allege and prove a case following within the terms of the statute. *Joy v. Little*, — M —, 328 P 2d 636, 639, 641.

##### Right to Relief

In action to prohibit defendant from cancelling an agreement for sale of lands even though the deposit in court might be legally insufficient as a tender to defendant, plaintiff might be relieved from forfeiture upon a showing of facts sufficient to appeal to the conscience of a court of equity. *Blackfeet Tribe of the Blackfeet Indian Reservation v. Kliebs Livestock Co.*, 160 F Supp 131, 133, 141.

### CHAPTER 2—COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

#### 17-201. (8659) Person suffering detriment may recover damages.

##### Operation and Effect

In an action for damages to an automobile, it was not a condition precedent to recovery that the plaintiff should have

first incurred an indebtedness or that he should actually have paid the sum claimed for the repairs. *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517.

#### 17-202. (8660) Detriment defined.

##### References

Cited or applied in *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517.

### CHAPTER 3—MEASURE OF DAMAGES

#### 17-301. (8667) Measure of damages for breach of contract.

##### Detriment Proximately Caused

In action by plaintiffs, who purchased residence from contractor before it was completed, to recover for defective material and workmanship, instruction, although broad, was not prejudicial, where it read: "You are instructed that if you find from a preponderance of the evidence in this action that plaintiffs are entitled

to damages, then in arriving at the measure of damages, it is the amount which will compensate the plaintiff for all detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom, or which has resulted therefrom." *Mitchell v. Carlson*, 132 M 1, 313 P 2d 717, 719, 720.

#### 17-310. (8676) Breach of agreement to pay for personal property sold.

##### References

Cited or applied in *Bennett v. Dodgson*, 129 M 228, 284 P 2d 990, 996.

### CHAPTER 4—DAMAGES FOR WRONGS

#### 17-401. (8686) Breach of obligation other than contract.

##### References

Cited or applied in *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517.

## CHAPTER 5—PENAL DAMAGES

## 17-503. (8696) Injuries to trees, etc.

**References**

Cited in *Thompson v. Mattuschek*, — M —, 333 P 2d 1022, 1027.

## CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

## 17-803. (8716) No remedy unless mutual.

**Operation and Effect**

Vendee of a contract for the sale of mining property cannot compel specific performance by the vendor, where the contract called for the vendee to deposit a specific amount of cash in the bank, and the vendee had not done so. *Sidwell v.*

*The New Mine Sapphire Syndicate*, 130 M 189, 297 P 2d 299, 303. (Dissenting opinion, 130 M 189, 297 P 2d 299, 303.)

**References**

Cited in *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

## 17-807. (8720) What cannot be specifically enforced.

**Certainty and Completeness of Contract**

Absolute certainty and completeness in every detail is not a prerequisite of specific performance, only reasonable certainty and completeness being required. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

A contract to be specifically enforced must be complete and certain in all essential matters included within its scope. Nothing must be left to conjecture or surmise, or be so vague as to make it impossible for the court to glean the intent of the parties from the instrument, or the acts sought to be enforced. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

Those matters which are merely subsidiary, collateral, or which go to the performance of the contract are not essential, and therefore need not be ex-

pressed in the informal agreement. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

**Lease with Option to Buy**

Plaintiff was entitled to specific performance of agreement by which defendants gave plaintiff an exclusive option to purchase land under the existing lease for \$8,500; plaintiff's method of exercising the option was to pay defendants \$1,500 before November 1, 1951; that sum would constitute the down payment on the property; payment of the balance was provided for by the plaintiff delivering to the defendants two-thirds of the crop raised each year, such crop share to cover the payment due and owing on the contract for that year; and it was further provided that the plaintiff was to summer fallow 45 acres of land during the year 1951. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020, 1021.

## 17-809. (8722) What parties cannot have specific performance, etc.

**Operation and Effect**

Vendee of a contract for the sale of mining property cannot compel specific performance by the vendor, where the contract called for the vendee to deposit a specific amount of cash in the bank and he had not done so. An allegation in the

complaint that the vendee had deposited a substantial sum in the bank was not sufficient since the contract called for a specific amount. *Sidwell v. The New Mine Sapphire Syndicate*, 130 M 189, 297 P 2d 299, 303. (Dissenting opinion, 130 M 189, 297 P 2d 299, 303.)

## CHAPTER 9—SPECIFIC RELIEF—REVISION AND RESCISSION OF CONTRACTS

## 17-901. (8726) When contract may be revised.

**Operation and Effect**

Where a landowner, induced by the fraud of the person with whom he was contracting, assigned a 1/32 royalty interest instead of an undivided 1/32 interest in and to minerals under and upon his lands, the assignment will be reformed, amended, and corrected by the courts to correctly embody the agreement of the

parties. *Carroll v. Funk*, 222 F 2d 508, 511.

Where plaintiff knew that defendant was acting under a mistake with regard to a writing, he was not entitled to revision on the ground of mistake. *Schilling v. Huber*, 133 M 80, 320 P 2d 346, 348.



**17-902. (8727) Presumption as to intent of parties.**

**Mineral Rights**

Grantors seeking reformation of deeds by which they retained portions of land-owners' mineral royalties were not entitled to relief where evidence did not

show that deeds contained no provision reserving all mineral and leasing rights in grantors. *Voyta v. Clonts*, — M —, 328 P 2d 655, 661.

**17-903. (8728) Principles of revision.**

**References**

Cited in *Voyta v. Clonts*, — M —, 328 P 2d 655, 661.

CHAPTER 10—SPECIFIC RELIEF—CANCELLATION OF INSTRUMENTS

**17-1002. (8734) Instrument obviously void.**

**Effect on Lease**

This section fortifies a holding that when a tax claim has been removed as a cloud on title, a lease given by the

tax claimant no longer constitutes a cloud on the title even though the lessee was not a party to the quiet title action. *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

## TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

### CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS— HOLIDAYS—OTHER GENERAL PROVISIONS

#### 19-102. (15) Words and phrases, how construed.

##### References

Cited or applied in State v. Bain, 130 M  
90, 295 P 2d 241, 244.

#### 19-103. (16) Certain words defined.

##### References

Cited or applied in State ex rel. Burns  
v. Lacklen, 129 M 243, 284 P 2d 998,  
1001; Ruona v. City of Billings, — M —,  
323 P 2d 29, 30.

## TITLE 20—DEPOSIT

### CHAPTER 2—DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

20-203. (7650) **Obligations as to use of thing deposited.**

#### References

Cited or applied in State ex rel. Olsen  
v. Sundling, 128 M 596, 281 P 2d 499, 502.

20-209. (7656) **Gratuitous deposit defined.**

#### References

Cited or applied in State ex rel. Olsen  
v. Sundling, 128 M 596, 281 P 2d 499, 502.

## TITLE 21—DIVORCE

### CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

#### 21-103. (5736) Causes for divorce.

##### Relief Granted

There is no authority in the Montana Civil Code whereby the courts, by statute, could grant a divorce where only separate maintenance is sought. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

Where wife files complaint seeking separate maintenance, and husband files

cross-complaint seeking an absolute divorce but court finds against husband, the court cannot, in finding for the wife, decree an absolute divorce in her favor, since the court may not grant any relief beyond that which is sought for by the prevailing party. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

#### 21-106. (5738) Extreme cruelty defined.

##### Bodily Injury

Husband was entitled to divorce where wife had repeatedly inflicted and threatened bodily injury and personal violence upon him. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 119.

wife into violent action against husband. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 120.

##### Provocation

Trial judge must determine whether sufficient provocation exists to provoke

##### References

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

#### 21-112. (5744) Desertion—how cured.

##### Cruel Treatment

Wife seeking separate maintenance was not guilty of desertion where she was forced to leave defendant because of his

cruel treatment and brutal acts. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 859.

#### 21-118. (5750) Divorces denied, on showing what.

##### Recrimination

The doctrine of recrimination is that if both parties have a right to divorce, neither party has. The principle is of ancient origin and reached back to the Mosaic Code and beyond. Although the Roman law did not allow divorce yet some legal historians trace the rule back to the "compensatio criminum" of the Roman law relating to property settlements. The ecclesiastical courts of England adopted the principle from the canon law and then injected it into proceedings for separation from bed and board. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 270.

It is not an absolute but a qualifying doctrine. If it were to be applied strictly great inequity would be done, for it so often happens that neither party to a suit has been free from fault. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

When the record clearly shows "the legitimate objects of the marriage have been destroyed" then the parties are entitled to have the marriage dissolved. No public policy would be served by denying a divorce because each party was guilty of extreme cruelty toward the other. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

Doctrine of recrimination was inapplicable where court found that defendant husband was not guilty of the infliction of extreme cruelty upon the plaintiff wife, nor was he guilty of the infliction of grievous mental suffering upon the plaintiff. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 120.

##### References

Cited or applied in *Deich v. Deich*, — M —, 323 P 2d 35, 45.

#### 21-120. (5752) Collusion, what constitutes.

##### References

Cited or applied in *Deich v. Deich*, — M —, 323 P 2d 35, 45.



**21-122. (5754) Requisites to condonation.****Absence of Good Faith**

Offers and solicitation of condonation were not made in good faith and did not bar plaintiff's action for separate maintenance where record showed that defendant was exploring the possibility of obtaining a church annulment of the mar-

riage; there was an absence of good faith on his part in seeking condonation; and there was no evidence tending to show that plaintiff would be free of danger of renewed cruelty were she to return and live with defendant. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 858.

**21-128. (5760) Recrimination, what constitutes.****Recrimination**

It is not an absolute but a qualifying doctrine. If it were to be applied strictly great inequity would be done, for it so

often happens that neither party to a suit has been free from fault. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

**21-134. (5766) Period of residence required to entitle plaintiff, etc.****References**

Cited or applied in *Mortenson v. Mortenson*, 129 M 290, 285 P 2d 834, 836;

*Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

**21-135. ((5767) Divorce not granted by default alone, etc.****References**

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 600 (dissenting opinion).

**21-136. (5768) Relief may be adjudged, when divorce is denied.****Legislative Policy**

The apparent policy of the legislature in adopting this section was to discourage the incautious granting of divorces and in doubtful cases to give the court the authority to grant a separation rather than to destroy the vinculum of the marriage, the reason for this being that a reconciliation of the parties may be accomplished by legally separating them for a time thus permitting their passions and prejudices to subside and for the further and more important reason that the children, if any, resulting from the marriage must come foremost in the court's consideration. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

**Separate Maintenance**

There is no authority in the Montana Civil Code whereby the courts, by statute, could grant a divorce where only separate maintenance is sought. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

Where a wife files a complaint seeking separate maintenance the court cannot, in finding for the wife, decree an absolute divorce in her favor, since the court may not grant any relief beyond that which is sought for by the prevailing party. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

**21-137. (5769) Expenses of action—alimony.****Attorney's Fees**

Additional attorney's fee was properly disallowed wife where she had been found guilty of gross misconduct. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 121.

Attorneys' fees are wholly within the discretion of the court to grant upon a showing of necessity. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 121.

Costs and counsel fees may be allowed on motion to modify child custody. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*, 128 M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124

M 26, 218 P 2d 929; *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1096, 1097.

**Continuing Jurisdiction**

Generally the court's jurisdiction is continuing in child custody matters. *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1095.

**Expenses of Action**

Upon timely and proper application made in advance of the performance of the professional services and the incurring of expenses rested within the discretion of the trial court to grant expense money regardless of whose acts and conduct were

responsible for the granting of the divorce. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 269.

### Jurisdiction

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 232.

### Maintenance Money

Although this section uses the term "alimony" generically to mean "any money necessary to enable the wife to support herself or her children," it is distinguishable from money for support of wife provided in section 21-139. *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1098.

## 21-138. (5770) Orders respecting custody of children.

### Appeal

In the absence of a strong showing of abuse of discretion by district court, custody orders should not be disturbed on appeal. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 226.

### Attorney's Fees

Costs and counsel fees may be awarded in custody modifications. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*, 128 M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124 M 26, 218 P 2d 929; *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1096, 1097.

### Continuing Jurisdiction

Generally the court's jurisdiction is continuing in child custody matters. *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1095.

### Custody of Children

The statutes expressly invest the trial judge with much discretion regarding the custody of children. *Wilson v. Wilson*, 128 M 511, 278 P 2d 219, 222.

### Habeas Corpus to Gain Custody

When decree of divorce was rendered in Utah and custody of children was granted to mother she then had the preference right. She waived this right when she offered to give up their custody and father took them to his home in Montana, and she could not deprive father of custody by habeas corpus proceedings in Montana unless he was an unfit person to have the custody, or unless it was shown that the best welfare of the children required that they be taken from him. *State ex rel. Lessley v. District Court*, 132 M 357, 318 P 2d 571, 574.

### Reduction of Support and Maintenance

Award of \$700 per month for support and maintenance was reduced to \$300 where parties were married only 27 days until separation took place; plaintiff did nothing to help accumulate the financial resources held by defendant; she had been receiving about \$25 per week as wages in Ireland prior to her marriage; she had not been accustomed to living in New York City and evidence showed that apartments were available at the cost of about \$100 per month. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 859.

### References

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

### Interlocutory Nature

Child custody orders are interlocutory in nature. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 226; *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1097.

### Jurisdiction

Although proceedings for divorce are undoubtedly statutory, jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 232.

### Modification

Child custody orders are modifiable in the sound discretion of the district court for good cause shown. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 226.

In hearings on motions to modify child custody orders, parties desiring written findings of facts and conclusions of law must move for them in writing at the close of the evidence, as the statute requires. Even then, if the evidence justifies but one conclusion, formal findings are not necessary. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 230.

In the absence of statute, the court need not make formal findings of fact in support of its order modifying the custody provisions of divorce decrees. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 229.

Mother's affidavit on which citation for hearing on modification of custody decree was issued was properly controverted by father's verified answer. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 229.

When the custodial fitness of neither spouse is questioned a bill of exceptions and a judgment roll reflecting four modifications of custody orders in nine weeks, no matter how well intended or by whom sought or ordered, supported by undis-

puted testimony, is clear prima facie record of substantial change affecting the children warranting modification of decree. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 228.

Father who refuses to make payments for support of children required by the decree is not entitled to petition for modification of the decree unless the best interests and welfare of the children require the modification. *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1098.

#### **Mother Preferred**

Other things being equal, custody in the mother is to be preferred where children are of tender years. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 226.

#### **Operation and Effect**

An order by a California court which modified a prior California divorce decree and awarded custody of minor children to the father was void because it was made without jurisdiction where it was shown that the children were domiciled in Montana with their mother, even though the mother made a general appearance in the California court to contest the modification. Where the minor's domicil is not within the jurisdiction at the time, the "res" likewise is not within the jurisdiction. The courts may not proceed even with both parents before it. A minor has a juristic status of his own to which it is difficult indeed to deny recognition when his custody is the question before the court, and even though the contest is between his parents, who themselves have submitted to the jurisdiction of the court. For he is the real party in interest in any such case as is evidenced by the familiar

rule that in awarding his custody the paramount inquiry is always his welfare and best interests. *Application of Enke*, 129 M 353, 287 P 2d 19, 24, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

#### **Order of Visitation**

The privilege of visitation should not be left entirely to the discretion of the party having the child in custody. *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1097.

Right of visitation may be conditioned upon prompt payment of money decreed for support of children. *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1098.

#### **Residence of Children**

Limitations on residence of children are to be conditioned by what appears best for the children and the trial judge is invested with much discretion in these matters. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 230; *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1097.

There was no abuse in the discretion exercised by the district court in refusing to restrict residence of children where their well-being was not so much dependent upon continuance or change of their present residence as upon change in their parents' hearts. *Barbour v. Barbour*, — M —, 339 P 2d 1093, 1097.

#### **Stay of Appeal**

An appeal from an order modifying divorce decree does not stay the enforcement of the order. It can only be stayed by an application for an order staying the proceedings under section 93-8003, subd. 2. *Application of Nelson*, 132 M 252, 316 P 2d 1058, 1059.

### **21-139. (5771) Support of wife and children on divorce, etc.**

#### **"Maintenance Money" Distinguished**

The term "alimony" as used in this section is distinguishable from "maintenance money" provided by section 21-137. *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1098.

#### **Modification of Custody Orders**

Costs and counsel fees may be allowed on motion to modify child custody. *Trud-*

*gen v. Trudgen*, — M —, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*, 128 M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124 M 26, 218 P 2d 929; *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1096, 1097.

#### **References**

Cited or applied in *Wilson v. Wilson*, 128 M 511, 278 P 2d 219, 222.

## TITLE 22—DOWER

### CHAPTER 1—DOWER

#### 22-101. (5813) Dower.

##### References

Cited in *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

#### 22-116. (5828) Right to dower not affected by acts of husband.

##### Operation and Effect

Where vendor's wife did not sign a contract for deed, and there was no evidence that she intended to join in a deed conforming to the contract for deed,

no action would lie against her for reformation of the deed to conform to the contract. *Schillinger v. Huber*, 133 M 80, 320 P 2d 346, 350.



## TITLE 23—ELECTIONS

- Chapter 3. Qualifications and privileges of electors, 23-304.
5. Registration of electors, 23-503, 23-511, 23-515, 23-519, 23-527.
  6. Judges and clerks of elections, 23-608, 23-612.
  7. Election supplies, 23-704.
  9. Party nominations by direct vote—the direct primary, 23-902, 23-908, 23-909, 23-929.
  10. Presidential electors and delegates to national conventions, 23-1006.
  12. Conducting elections—the polls—voting and ballots, 23-1210, 23-1213, 23-1219.
  13. Voting by absent electors, 23-1302 (1), 23-1302 (2), 23-1303, 23-1306, 23-1307, 23-1311, 23-1313, 23-1320.
  14. Voting by absent electors in military service, 23-1401 to 23-1405.
  16. Voting machines—conduct of election when used, 23-1608, 23-1608A.
  17. Election returns, 23-1702, 23-1703, 23-1709, 23-1714, 23-1715.
  18. Canvass of election returns—results and certificates, 23-1808, 23-1813.

### CHAPTER 3—QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section 23-304. Lists and precinct registers.

**23-304. Lists and precinct registers.** After the closing of registration the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county. He shall also prepare the precinct register for each precinct in the manner provided by section 23-515, and deliver the same to the judges of election prior to the opening of the polls. In preparing precinct registers it shall not be necessary for the county clerk to make separate precinct registers containing only the names of electors who are qualified to vote on the question of the incurring of a state debt, the issuance of bonds or debentures by the state or the levying of a state tax. In lieu of preparing such a list of electors qualified to vote on such question, the county clerk shall stamp the word "TAX-PAYER" on the precinct register opposite the name of each qualified elector who is a taxpayer and entitled to vote upon any of the questions hereinbefore indicated. No other showing shall be required to establish that such elector is in fact a taxpayer and entitled to vote as such.

All of the laws of this state applying to the holding of general biennial state elections, insofar as the same are applicable thereto and not in conflict with any of the provisions of this act, shall apply to, and govern and control such election and the canvassing and return of the votes cast on such question at such election; and abstracts made by the several county clerks shall be returned to the secretary of state in the manner provided by sections 23-1812, 23-1813, for the abstract of votes for state officers.

**History:** En. Sec. 2, Ch. 28, L. 1945;  
amd. Sec. 1, Ch. 92, L. 1949; amd. Sec. 1,  
Ch. 64, L. 1959.

#### Amendment

The 1959 amendment substituted the words "precinct register" for the words "poll books" each time they appear.

### CHAPTER 5—REGISTRATION OF ELECTORS

Section 23-503. Method of registering.

- 23-511. Cancellation of registry for failure to vote—reregistration—exception of persons in United States service.

- 23-515. Precinct register—combining—when not furnished city or town.  
 23-519. Compensation of county clerks.  
 23-527. Omission of name from precinct register—remedy.

**23-503. (555) Method of registering.** Any elector residing within the county may register by appearing before the county clerk and ex officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for by such registry card, and by signing and verifying the affidavit or affidavits on the back of such card. Any elector in the United States service who is absent from the state of Montana and the county of which he or she is a resident may register either (a) by mailing such registry card filled out and signed under oath to the county clerk of the county in which said elector resides, or (b) by mailing the federal post card application filled out and signed under oath to said county clerk.

If any person shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the county clerk or to the registration clerk or to any other person qualified to register an elector, to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry lists otherwise than in the manner provided in this act, he shall be guilty of a felony, and upon conviction be imprisoned in the state penitentiary for not less than one (1) nor more than three (3) years.

**History:** En. Sec. 8, Ch. 122, L. 1915; re-en. Sec. 555, R. C. M. 1921; amd. Sec. 4, Ch. 172, L. 1937; amd. Sec. 1, Ch. 83, L. 1953; amd. Sec. 1, Ch. 18, L. 1959.

#### **Amendment**

The 1959 amendment substituted the present second sentence in the first paragraph for a former sentence for text of which see parent volume.

**23-511. (562) Cancellation of registry for failure to vote—reregistration—exception of persons in United States service.** Immediately after every general election, the county clerk of each county shall compare the list of electors who have voted at such election in each precinct, as shown by the official poll books, with the official register of said precinct, and he shall remove from the official register herein provided for the registry cards of all electors who have failed to vote at such election, and shall mark each of said cards with the word "cancelled," and shall place such cancelled cards for the entire county in alphabetical order in a separate drawer to be known as the "cancelled file"; but any elector whose card is thus removed from the official register may reregister in the same manner as his original registration was made, and the registration card of any elector who thus reregisters shall be filed by the county clerk in the official register in the same manner as original registration cards are filed. The county clerk shall, at the same time, cancel, by drawing a red line through the entry thereof, the name of all such electors who have failed to vote at such election.

In the case of an elector in the United States service who shall fail to vote, his or her registry card shall not be cancelled, except for causes designated under section 23-518.

**History:** En. Sec. 15, Ch. 122, L. 1915; re-en. Sec. 562, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1937; amd. Sec. 1, Ch. 144, L. 1941; amd. Sec. 1, Ch. 177, L. 1943; amd. Sec. 2, Ch. 18, L. 1959.

#### **Amendment**

The 1959 amendment substituted the present second paragraph for the former second paragraph for the text of which see parent volume.

**23-515. (568) Precinct register—combining—when not furnished city or town.** During the time intervening between the closing of the official register and the day of the ensuing election, the county clerk shall prepare for each precinct a book to be known as the "precinct register" which shall be for the use of the clerks and judges of election in each such precinct. Such books shall be arranged for the listing of the names of the electors in alphabetical divisions, each division to be composed of ruled columns with appropriate headings, under which the information contained upon the registry card of each elector shall be transcribed, excepting the oath of the elector, and the certified copy of the precinct registers so prepared shall be delivered to the judges of the election at or prior to the opening of the polls in each precinct. Where the precincts in municipal elections, or in elections in school districts of the first class, include more than one county precinct, the county clerk shall combine into one precinct register the names of all electors in the several precinct registers of the precincts of which such municipal or school district precinct is composed. The county clerk shall omit from the list of names of all certified voters so inserted in the precinct register herein provided for, the names and registry of all electors which it is the duty of the county clerk to cancel under the provisions of section 23-518, provided that the requirements contained in the provisions of said section shall have been brought to the attention of the county clerk not less than twenty days preceding the election. If the city clerk of any city or town shall, in writing, certify to the county clerk, not less than twenty-five days before the date fixed by law for the holding of any primary nominating election, that no petitions for nomination under the direct primary election law for any office to be filled at the next ensuing annual city election have been filed with such city clerk, not less than thirty days before the date fixed by law for the holding of the primary nominating election, then the county clerk shall not prepare for the city any precinct register or precinct registers for that year.

**History:** En. Sec. 23, Ch. 113, L. 1911; amd. Sec. 23, Ch. 74, L. 1913; amd. Sec. 18, Ch. 122, L. 1915; amd. Sec. 3, Ch. 97, L. 1919; re-en. Sec. 568, R. C. M. 1921; amd. Sec. 2, Ch. 61, L. 1933; amd. Sec. 2, Ch. 64, L. 1959.

#### **Amendment**

The 1959 amendment substituted the words "precinct register" or "precinct registers" for the words "poll book" or "poll books" each time they appear.

**23-519. (571) Compensation of county clerks.** The county clerks shall receive, for the use and benefit of the county, from every city or town, or from every school district of the first class, (to which the precinct registers referred to in the last section have been furnished), the sum of three (\$0.03) cents for each and every name entered in such precinct registers, and in addition he shall receive in like manner the amount of the actual expense incurred in printing and posting the lists of electors, and in publishing the notices required by this law, and any other expense incurred on account



of any such municipal or school district election. It shall be the duty of the city or town council, or board of school trustees, to order a warrant drawn for such sum as may be due to the county clerk under the provisions of this section, within thirty (30) days after the presentation of the account to them by said county clerk, provided, however, that in event of the election of candidates at municipal primary elections, as provided for in 11-3113, and no general municipal election is required to be held, the county clerk shall prepare no precinct registers for such general municipal election and shall make no charge therefor; provided further, that in elections of school districts of the first class if only as many candidates are nominated as there are vacancies to be filled, the county clerk shall furnish no precinct registers and make no charge therefor to such school district.

It shall be the duty of the city clerk or the clerk of the school district to notify the county clerk in such case as above mentioned, where no precinct registers are required, immediately after the facts become known to the city council or the board of trustees of the school district, which makes unnecessary the furnishing of such precinct registers.

**History:** En. Sec. 29, Ch. 113, L. 1911; amd. Sec. 29, Ch. 74, L. 1913; amd. Sec. 21, Ch. 122, L. 1915; re-en. Sec. 571, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1935; amd. Sec. 3, Ch. 64, L. 1959.

**Amendment**

The 1959 amendment substituted the words "precinct registers" for the words "poll books" each time they appear.

**23-527. (579) Omission of name from precinct register—remedy.** Any elector whose name is erroneously omitted from any precinct register may apply for and secure from the county clerk a certificate of such error, and stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct, the said elector shall be entitled to vote in the same manner as if his name had appeared upon the precinct register. Such certificate shall be marked "voted" by the judges, and shall be returned by them with the precinct register.

**History:** En. Sec. 29, Ch. 122, L. 1915; re-en. Sec. 579, R. C. M. 1921; amd. Sec. 4, Ch. 64, L. 1959.

**Amendment**

The 1959 amendment substituted the words "precinct register" for either the words "precinct poll-book" or "poll book" each time they appear.

## CHAPTER 6—JUDGES AND CLERKS OF ELECTIONS

Section 23-608. Clerks to mail to judges notices of election—form of notices.  
23-612. Instructions of judges of elections.

**23-608. (594) Clerks to mail to judges notices of election—form of notices.** The clerks of the several boards of county commissioners must, at least twenty (20) days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be substantially as follows:

Notice is hereby given that on the first Tuesday after the first Monday of November, 19\_\_, at the house \_\_\_\_\_, in the county of \_\_\_\_\_,



an election will be held for \_\_\_\_\_ (naming the offices to be filled, including electors of president and vice-president, a representative in congress, state, county and township officers), and for the determination of the following questions (naming them), the polls of which election will be open at 8:00 A.M. and continuing open until 8:00 P.M. of the same day.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_.

Signed A. B., clerk of the board of county commissioners.

**History:** Ap. p. Sec. 7, p. 461, Cod. Stat. 1871; re-en. Sec. 7, p. 71, L. 1876; re-en. Sec. 521, 5th Div. Rev. Stat. 1879; re-en. Sec. 1013, 5th Div. Comp. Stat. 1887; amd. Sec. 1266, Pol. C. 1895; re-en. Sec. 506, Rev. C. 1907; re-en. Sec. 594, R. C. M. 1921; amd. Sec. 2, Ch. 167, L. 1945; amd. Sec. 1, Ch. 14, L. 1957.

#### Amendment

The 1957 amendment substituted "8:00 A. M. and continuing open until 8:00 P. M." for "8 o'clock in the morning and continuing open until 6 o'clock in the afternoon."

**23-612. Instructions of judges of elections.** Before each election, general or primary, all judges appointed to act at said election, who do not possess a certificate of instruction as provided for in this act, shall be instructed by a person delegated by the board of county commissioners in regard to the powers, duties, and liabilities imposed upon election judges by the election laws of the state of Montana. For the purpose of giving such instruction, the delegate of the board of county commissioners shall call such meeting or meetings of the judges of election as shall be necessary. Each judge of election shall attend such meeting or meetings and receive at least two (2) hours of instruction, and as compensation for the time spent in receiving such instruction, each judge that shall serve in the election shall receive the sum of one dollar (\$1.00) per hour of instruction, to be paid to him at the same time and in the same manner as compensation is paid to him for his or her services on election day.

Upon the completion of the two (2) hours of instruction, the judge shall receive a certificate from the person delegated by the board of county commissioners from whom he or she received instruction, that the instruction has been completed, provided that no certificate of instruction shall be valid for a period of greater than two (2) years. No person shall serve as a judge of election unless this certificate has been received, provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency. Notice of place and time of instruction of the political judges must be given by the board of county commissioners to the county chairmen of the two major political parties in the county.

**History:** En. Sec. 1, Ch. 210, L. 1957.

#### Title of Act

An act to provide for instruction of election judges; providing for the appointment by the board of county commissioners of an instructor; providing for compensation for the election judges being instructed; providing for certificates of instruction; providing for notice to the

county chairman of the two major political parties of the county of the place and time of instruction; and containing a repealing clause.

#### Repealing Clause

Section 2 of Ch. 210, Laws 1957 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 7—ELECTION SUPPLIES

Section 23-704. County commissioners to have blanks prepared.

**23-704. (602) County commissioners to have blanks prepared.** The necessary printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to inclose the returns, must be furnished by the boards of county commissioners to the officers of each election precinct at the expense of the county.

**History:** En. Sec. 1174, Pol. C. 1895; re-en. Sec. 460, Rev. C. 1907; re-en. Sec. 602, R. C. M. 1921; amd. Sec. 5, Ch. 64, L. 1959.

**Amendment**

The 1959 amendment substituted "precinct registers, poll-books, tally sheets" for "poll-lists, tally lists."

CHAPTER 9—PARTY NOMINATIONS BY DIRECT VOTE—  
THE DIRECT PRIMARY

Section 23-902. Date of holding primary election—purpose of.

23-908. Poll-books, precinct register, and tally sheets to be sealed and returned.

23-909. Political party nominations made exclusively as herein provided.

23-929. County and city central committeemen, how elected.

**23-902. (632) Date of holding primary election—purpose of.** On the first Tuesday of June, preceding any general election not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections, at which public officers in this state and in any district or county are to be elected, a primary nominating election shall be held in accordance with this act in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this act, for United States senators and representatives, in Congress and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen, at the ensuing election wholly by electors within the state, or any subdivision of this state, and also for choosing and electing county central committeemen and committeewomen by the several parties subject to the provisions of this act.

**History:** En. Sec. 2, Initiative Measure Nov. 1912; re-en. Sec. 632, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1925; amd. Sec. 1, Ch. 3, L. 1927; amd. Sec. 12, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 1, Ch. 266, L. 1955; amd. Sec. 1, Ch. 274, L. 1959.

**Amendment**

The 1959 amendment deleted a clause which immediately preceded the final clause pertaining to county committeemen and which read, "for the purpose of expressing preferences for candidates for president of the United States."

**23-908. (638) Poll-books, precinct register, and tally sheets to be sealed and returned.** (1) Immediately after canvassing the votes in the manner aforesaid, the judges and clerks who complete the count, before they separate or adjourn shall inclose the poll-books in separate covers and securely seal the same. They shall also inclose the tally sheets in separate envelopes and seal the same securely. They shall also inclose the precinct registers in separate envelopes and seal the same securely. They shall also envelope all the ballots fastened together, as aforesaid, and seal the same securely;

and they shall in writing, with pen and ink, specify the contents, and address each of said packages upon the outside thereof to the county clerk of the county in which the election precinct is situated. These sealed packages of counted ballots shall be marked on the outside, showing what numbers are contained therein, but once sealed they are not to be opened by any one until so ordered by the proper court.

(2) When the count is completed, the ballots counted and sealed, and enveloped and marked for identification as aforesaid, shall be packed in the two ballot-boxes, and nothing else shall be put into the boxes. The boxes shall then be locked, and the official seal of the board shall be pasted over the keyhole and over the rim of the lid of the box, so that the box cannot be opened without breaking the seal. Thereafter neither the county clerk nor the canvassers making the abstracts of the votes shall break the said seals upon the ballot-boxes, nor shall anyone break the seals on the boxes or the ballots, except upon the order of the proper court in case of contest, or upon the order of the county board when the boxes are needed for the ensuing election.

**History:** En. Sec. 7, Initiative Measure Nov. 1912; re-en. Sec. 638, R. C. M. 1921; amd. Sec. 6, Ch. 64, L. 1959.

**Amendment**

The 1959 amendment added the third sentence in subd. (1).

**23-909. (639) Political party nominations made exclusively as herein provided.** Every political party which has cast three per centum (3%) or more of the total vote cast for representative in Congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 23-801. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or nonpartisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for such public office in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots.

Any political party that did not cast three per centum (3%) or more of the total vote cast for representative in Congress, as above, and any new political party about to be formed or organized, [may] make nominations for public office as provided in section 23-801.

**History:** En. Sec. 8, Initiative Measure Nov. 1912; re-en. Sec. 639, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1927; amd. Sec. 2, Ch. 266, L. 1955; amd. Sec. 2, Ch. 274, L. 1959.

**Amendment**

The 1959 amendment deleted several paragraphs setting forth the procedure for a presidential preference primary. For section prior to amendment see parent volume.



**23-929. (662) County and city central committeemen, how elected.**

(1) to (4). \* \* \* [Subdivisions (1) to (4), same as parent volume.]

(5) Said committee shall meet within fifteen (15) days after the primary election herein provided for, and shall organize by electing a chairman and one (1) or more vice-chairmen, provided that either the chairman or first vice-chairman shall be a woman. They shall also elect a secretary and such other officers as they shall think proper. It shall not be necessary for such officers to be precinct committeemen or committeewomen. They may select managing or executive committees and authorize such subcommittees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law. The chairman of the county central committee shall call said central committee meeting and not less than ten (10) days before the date of said central committee meeting shall publish said call in a newspaper published at the county seat and shall mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing the same.

(6) and (7). \* \* \* [Subdivisions (6) and (7), same as parent volume.]

**History:** En. Sec. 32, Initiative Measure Nov. 1912; re-en. Sec. 662, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1927; amd. Sec. 1, Ch. 34, L. 1929; Amd. Sec. 1, Ch. 6, L. 1933; amd. Sec. 1, Ch. 84, L. 1939; amd. Sec. 1, Ch. 64, L. 1951; amd. Sec. 3, Ch. 266, L. 1955; amd. Sec. 1, Ch. 219, L. 1959.

**Amendment**

The 1959 amendment deleted from the beginning of subd. (5) the words "In each year when a president of the United States is to be elected."

## CHAPTER 10—PRESIDENTIAL ELECTORS AND DELEGATES TO NATIONAL CONVENTIONS

Section 23-1006. Time of state convention—election of presidential electors and delegates to national convention.

**23-1006. (673.6) Time of state convention—election of presidential electors and delegates to national convention.** Not later than fifteen (15) days after said county convention and on a date set by the chairman of the state central committee, the delegates (or alternate delegates, in case any elected delegate cannot attend), shall hold a state convention at the state capital in Helena, Montana, for the purpose of electing delegates and alternates to the national convention of the parties and presidential electors. That the delegates and alternate delegates to the national conventions of each political party shall consist of three (3) delegates from each of the congressional districts, and the remaining delegates and alternates from the state at large.

**History:** En. Sec. 6, Ch. 126, L. 1927; amd. Sec. 1, Ch. 55, L. 1953; amd. Sec. 14, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 5, Ch. 266, L. 1955; amd. Sec. 3, Ch. 274, L. 1959.

**Amendment**

The 1959 amendment deleted a sentence which appeared at the end of the section and read "The delegates and alternate delegates so elected shall support the

candidate whose candidacy is preferred as a result of the within primary until released by said candidate or unless said candidate shall not be nominated by said national convention or shall receive less than twenty per cent (20%) of the total votes cast on any ballot."

**Repealing Clause**

Section 4 of Ch. 274, Laws 1959 repealed all acts and parts of acts in conflict therewith.



## CHAPTER 12—CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

- Section 23-1210. Method of voting.  
 23-1213. Judges may aid disabled elector.  
 23-1219. List of voters.

**23-1210. (696) Method of voting.** On receipt of his ballot the elector must forthwith, without leaving the polling-place and within the guard-rail provided, and alone, retire to one of the places, booths, or compartments, if such are provided, and prepare his ballot. He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote. In case of a ballot containing a constitutional amendment, or other question to be submitted to the vote of the people, by marking an "X" in the square before the answer of the question or amendment submitted. The elector may write in the blank spaces or paste over any other name the name of any person for whom he wishes to vote, and vote for such person by marking an "X" before such name. No elector is at liberty to use or bring into the polling-place any unofficial sample ballot. After preparing his ballot the elector must fold it so the face of the ballot will be concealed and so that the indorsements stamped thereon may be seen, and hand the same to the judges in charge of the ballot-box, who shall announce the name of the elector and the printed or stamped number on the stub of the official ballot so delivered to him, in a loud and distinct tone of voice. If such elector be entitled then and there to vote, and if such printed or stamped number is the same as that entered on the poll-books as the number on the stub of the official ballot last delivered to him by the ballot judge, such judge shall receive such ballot, and, after removing the stub therefrom in plain sight of the elector, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot-box for the reception of voted ballots, and the stubs in a box for detached ballot stubs. Upon voting, the elector shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain within the guard-rail for other purposes than voting.

**History:** Ap. p. Sec. 24, p. 142, L. 1889; amd. Sec. 1361, Pol. C. 1895; amd. Sec. 1361, p. 119, L. 1901; amd. Sec. 5, Ch. 88, L. 1907; re-en. Sec. 552, Rev. C. 1907; re-en. Sec. 696, R. C. M. 1921; amd. Sec. 7, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1205.

**Amendment**

The 1959 amendment in the next to the last sentence of this section substituted "poll-books" for "poll-list."

**23-1213. (699) Judges may aid disabled elector.** Any elector who declares to the judges of election, or when it appears to the judges of election that he cannot read or write, or that because of blindness or other physical disability he is unable to mark his ballot, but for no other cause, must, upon request, receive the assistance of two of the judges, who shall represent different parties, in the marking thereof, or said disabled elector may request that any qualified elector whom he designates to the judges, and in whom he has trust and confidence, aid him in the marking of his ballot, and such judges must certify on the outside thereof that it was so marked with their assistance, or the name of the person of whom he requested and received assistance, and neither the judges nor, if such is the

case, the person who aided him, must thereafter give information regarding the same. The judges must require such declaration of disability to be made by the elector under oath before them, and they are hereby authorized to administer the same. No elector other than the one who may, because of his inability to read or write, or of his blindness or physical disability, be unable to mark his ballot, must divulge to any one within the polling-place the name of any candidate for whom he intends to vote, or, other than herein specifically allowed, ask or receive the assistance of any person within the polling-place in the preparation of his ballot.

**History:** Ap. p. Sec. 27, p. 142, L. 1889; amd. Sec. 1364, Pol. C. 1895; amd. Sec. 1364, p. 120, L. 1901; re-en. Sec. 555, Rev. C. 1907; re-en. Sec. 699, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1959. Cal. Pol. C. Sec. 1208.

#### **Amendment**

The 1959 amendment added provisions that disabled elector may request qualified elector whom he designates to judges and in whom he has trust to aid him in marking his ballot.

#### **Repealing Clause**

Section 2 of Ch. 32, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 32, Laws 1959 provided the act should be in effect immediately upon its passage and approval. Approved February 25, 1959.

**23-1219. (705) List of voters.** Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order voting. Such list is known as the poll-book.

**History:** En. Sec. 1370, Pol. C. 1895; re-en. Sec. 561, Rev. C. 1907; re-en. Sec. 705, R. C. M. 1921; amd. Sec. 8, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1229.

#### **Amendment**

The 1959 amendment in the last sentence substituted the words "poll-book" for the words "poll-list and forms a part of the poll-book of the precinct."

### **CHAPTER 13—VOTING BY ABSENT ELECTORS**

Section 23-1302 (1), 23-1302 (2). Application of absentee or physically incapacitated person for ballot.

23-1303. Form of application.

23-1306. Mailing ballot to elector—form of return and affidavit.

23-1307. Marking and swearing to ballot by elector.

23-1311. Duty of election judges—poll-lists, numbering ballots and rejected ballots.

23-1313. Envelopes containing ballots—deposit in box and rejection of ballot.

23-1320. Duty of elector if present on election day.

**23-1302(1). (716) Application of absentee or physically incapacitated person for ballot.** At any time within forty-five (45) days next preceding such election, any elector expecting to be absent on the day of election from the county in which his voting precinct is situated, or any elector in United States service, or any elector who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by the certificate of a physician licensed under the laws of Montana, plainly stating the nature of the physical incapacity of the applicant, and certifying (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town

clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

**History:** En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953; amd. Sec. 3, Ch. 18, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18 and once by Ch. 216. Chapter 18 was approved by the Governor, February 6, 1959 while Chapter 216 was approved March 11, 1959. Neither amendment mentioned the other amendment and in some respects the section was amended differently by each chapter. The section above is as amended by Ch. 18. The section as amended by Ch. 216 is set out as section 23-1302(2).

**23-1302(2). (716) Application of absentee or physically incapacitated person for ballot.** At any time within forty-five (45) days next preceding such election, any voter expecting to be absent on the day of election from the county in which his voting precinct is situated, for any reason whatsoever, or who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by his affidavit, plainly stating the nature of the physical incapacity of the applicant, and stating (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

**History:** En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953; amd. Sec. 1, Ch. 216, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18 and once by Ch. 216. Chapter 18 was approved by the Governor, February 6, 1959 while Chapter 216 was approved March 11, 1959. Neither amendment mentioned the other amendment and in some respects the section was amended differently by each chapter. The section above is as amended by Ch. 216. The section

#### Amendment

The 1959 amendment by Ch. 18 of Laws 1959 substituted the word "elector" for the word "voter" which appeared after the words "days next preceding such election, any" and substituted the phrase "any elector in United States service, or any elector" for the phrase "or serving in the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States."

as amended by Ch. 18 is set out as section 23-1302(1).

#### Amendment

The 1959 amendment by Ch. 216 of Laws 1959 substituted "for any reason whatsoever" for "or serving in the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States"; substituted "his affidavit" for "the certificate of a physician licensed under the laws of Montana" and substituted "stating" for "certifying."

**23-1303. (717) Form of application.** Application for such ballots shall be made on a blank furnished by the county clerk of the county of which the applicant is an elector, or the city or town clerk, if it be municipal, general, special or primary election, and shall be in substantially the following form:



"I, \_\_\_\_\_, a duly qualified elector of the \_\_\_\_\_ precinct, in the county of \_\_\_\_\_, and State of Montana, and am to the best of my knowledge and belief entitled to vote in such precinct in the next election, expecting to be absent from said county or, in all probability, to be physically incapacitated from going to my precinct poll on the day for holding such election, hereby make application for an official ballot to be voted by me at the said election.

Post office address to which ballot is to be mailed \_\_\_\_\_

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, personally appeared before me \_\_\_\_\_, who being first duly sworn, deposes and says that he is the person who signed the foregoing application, that he has read and knows the contents of same and knows to his own knowledge the matters and things therein stated are true.

\_\_\_\_\_  
\_\_\_\_\_ "

This application must be subscribed by the applicant and sworn to before some officer authorized to administer oaths, pursuant to the laws of the place of execution, and the application shall not be deemed complete without this affidavit.

Provided that application for such ballot by any elector in the United States may be made by the federal post card application, or by any written request, signed by said applicant, addressed to the county clerk of the county of residence of said elector.

**History:** En. Sec. 3, Ch. 110, L. 1915; re-en. Sec. 3, Ch. 155, L. 1917; re-en. Sec. 717, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1923; amd. Sec. 1, Ch. 32, L. 1941; amd. Sec. 3, Ch. 234, L. 1943; amd. Sec. 2, Ch. 104, L. 1953; amd. Sec. 1, Ch. 152, L. 1955; amd. Sec. 4, Ch. 18, L. 1959; amd. Sec. 2, Ch. 216, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18, Laws 1959 and once by Ch. 216, Laws 1959. Chapter 18 was approved by the Governor, February 6, 1959 while Ch. 216 was approved March 11, 1959. Neither amend-

ment mentioned the other act and as the acts amended the section in different respects, the compiler has made a composite section, incorporating the changes made by each act.

#### Amendments

The 1959 amendment by Ch. 18 substituted the present last paragraph for the former last paragraph for text of which see parent volume.

The 1959 amendment by Ch. 216 inserted the words "pursuant to the laws of the place of execution" in the next to the last paragraph.

**23-1306. (720) Mailing ballot to elector—form of return and affidavit.** Upon receipt of such application, properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been printed, the said county or city or town clerk shall send to such elector by mail, postage prepaid, one official ballot, or if there be more than one ballot to be voted by an elector of such precinct, one of each



kind, and shall inclose with such ballot or ballots an envelope, to be furnished by such county or city or town clerk, which envelope shall bear upon the front thereof the name, official title and post office address of such county or city or town clerk, and upon the other side a printed affidavit, in substantially the following form:

"State of \_\_\_\_\_ }  
County \_\_\_\_\_ } ss.

I, \_\_\_\_\_, do solemnly swear that I am a resident of the \_\_\_\_\_ precinct, (and if he be a resident of a city or town, Add: 'Residing at \_\_\_\_\_, in the town or city of \_\_\_\_\_'), County of \_\_\_\_\_ and State of Montana, and entitled to vote in such precinct at the next election; that I expect to be absent from the said county of my residence or, in all probability, to be physically incapacitated from going to my precinct poll on the day of holding such election and that I will have no opportunity to vote in person on that day.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and I hereby certify that the affiant exhibited to me the enclosed ballot or ballots for inspection before marking, and that the same was (or were) then unmarked and that he then in my presence, and in the presence of no other person, and in such manner that I could not see his vote, marked said ballot (or ballots) and inclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

Both the envelope in which the ballot is mailed to the elector in the United States service and the return envelope enclosed therein shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope, and with the words "Official Election Balloting Material—via Air Mail," or similar language, between the bars; that there be printed in the upper right corner of each such envelope, in a box, the words "Free of U. S. Postage, Including Air Mail"; that all printing on the face of each such envelope be in red; and that there be printed in red in the upper left corner of each state ballot envelope an appropriate inscription or blanks for return address of sender.

The return envelope shall be self-addressed to the county or city or town clerk.

The county or city or town clerk shall enclose with the ballot mailed to the elector in the United States service instructions for voting and returning the ballot.

**History:** En. Sec. 6, Ch. 110, L. 1915; amd. Sec. 6, Ch. 155, L. 1917; re-en. Sec. 720, R. C. M. 1921; amd. Sec. 5, Ch. 234, L. 1943; amd. Sec. 5, Ch. 18, L. 1959.

#### **Amendment**

The 1959 amendment added the last three paragraphs of this section.

**23-1307. (721) Marking and swearing to ballot by elector.** Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths, pursuant to the laws of the place of execution and may do so at any place including any foreign country, before any officer authorized by the laws of the place of execution to take acknowledgments of instruments, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots thereupon, in the presence of such officer, shall be folded by such voter so that each ballot shall be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope securely sealed. Said officer shall thereupon append his signature and official title at the end of said jurat and affidavit. Said envelope shall be mailed by such absent or physically incapacitated voter, postage prepaid, or delivered to the county or city or town clerk, as the case may be.

**History:** En. Sec. 7, Ch. 110, L. 1915; amd. Sec. 7, Ch. 155, L. 1917; re-en. Sec. 721, R. C. M. 1921; amd. Sec. 3, Ch. 151, L. 1923; amd. Sec. 6, Ch. 234, L. 1943; amd. Sec. 1, Ch. 60, L. 1953; amd. Sec. 3, Ch. 216, L. 1959.

#### **Amendment**

The 1959 amendment substituted the words "pursuant to the laws of the place of execution" for "and who has an official seal"; substituted "including any foreign

country" for "in the state of Montana, or in any other state or territory of the United States"; substituted "of the place of execution" for "without the state" and deleted the words "and affix his seal" which appeared after the words "and official title."

#### **Repealing Clause**

Section 4 of Ch. 216, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**23-1311. (725) Duty of election judges—poll-lists, numbering ballots and rejected ballots.** The judges of election, at the opening of the polls, shall note on the poll-books opposite the numbers corresponding to the numbers of the ballots issued to absent or physically incapacitated voters, as shown by the certificate of the county or city or town clerk, the fact that such ballots were issued to absent or physically incapacitated voters, and shall reserve said numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite such numbers.

The judges shall not allow any names to be inserted in the poll-books on the lines corresponding to said numbers, except the name of the elector entitled to each particular number according to the certificate of the county or city or town clerk, and the number of his ballot. Any so rejected shall be placed together with the voter's application and the absent or physically incapacitated voter's envelope provided for the purpose by the clerk and recorder or city or town clerk, which shall be sealed and endorsed by the words, "rejected absent or physically incapacitated voter ballots" numbered \_\_\_\_\_, and shall put thereon the number of the ballots given to absent or physically incapacitated voters according to the county or city or town clerk's certificate. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected, and such envelopes shall be placed in an envelope together with the other ballots, and shall not be opened without order of a court of competent jurisdiction.

**History:** En. Sec. 11, Ch. 110, L. 1915; amd. Sec. 11, Ch. 155, L. 1917; re-en. Sec. 725, R. C. M. 1921; amd. Sec. 10, Ch. 234, L. 1943; amd. Sec. 9, Ch. 64, L. 1959.

**Amendment**

The 1959 amendment in the first sentence substituted "poll-books" for "poll-lists, when one is required by law to be kept" and in the first sentence of the second paragraph substituted "poll-books" for "poll list."

**23-1313. (727) Envelopes containing ballots—deposit in box and rejection of ballot.** At any time between the opening and closing of the polls on such election day, the judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application, with the signature to such affidavit.

In case the judge finds the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct, and has not voted at such election, they shall open the absent or physically incapacitated voter's envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting the same to be opened or examined, shall ascertain whether the stub or stubs is or are still attached to the ballot or ballots, and whether the number thereon corresponds to the number in the county or city or town clerk's certificate. If so, they shall endorse the same in like manner that other ballots are endorsed, shall detach the stub as in other cases, and deposit the ballot or ballots in the proper ballot-box or boxes, and make in their election records the proper entries to show such elector to have voted. In case such affidavit is found to be insufficient, or that the said signatures do not correspond, or that such applicant is not then a duly qualified elector of such precinct, such vote shall not be allowed, but, without opening the absent or physically incapacitated voter envelope, the judges of such election shall mark across the face thereof "rejected as defective" or "rejected as not an elector" as the case may be. The absent or physically incapacitated voter envelope, when such absent vote or vote by a person physically incapacitated from going to the polls is voted, and the absent or physically incapacitated voter envelope with its contents, unopened, when such absent vote or vote by a person physically incapacitated from going to the polls is rejected, shall be deposited in the ballot-box containing the general or party ballots, as the case may be, retained and preserved in the manner by law provided for the retention and preservation of official ballots voted at such election. If, upon opening the absent or physically incapacitated voter's envelope, it be found that the stub of any ballot has been detached, or that the number thereon does not correspond to the number in the county or city or town clerk's certificate of the number issued to such absent or physically incapacitated voter, the ballot shall be rejected, and it shall then and there, and without looking at the face thereof, be marked on the back "rejected on the ground of \_\_\_\_\_," filling the blank with the statement of the reason of the rejection; which statement shall be dated and signed by the majority of the judges. The ballot or ballots so rejected, together with the absent or physically incapacitated voter's envelope bearing the application, and the said application, shall be all enclosed in an envelope, which shall be then and there securely sealed, and on such en-



velope the judges shall write or cause to be written (if not already printed thereon) the words, "rejected ballot of absent or physically incapacitated voter" (writing in the name of the elector). "The rejected ballot or ballots is or are \_\_\_\_\_." The judges shall designate the rejected ballot as "general ballot," if it be a ballot for candidates that be rejected. If the rejected ballot be a one put on a question submitted to the vote of the electors, the judges shall designate such ballot as ballot question No. \_\_\_\_\_ in the certificate on the envelope. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected and such enclosing envelope shall be placed in the envelope in which the other ballots voted or (are) required to be placed and shall not be opened without an order of a court of competent jurisdiction. The county or city or town clerk shall provide and have delivered to the judge of election suitable envelopes for enclosing rejected absent or physically incapacitated voter's ballots.

**History:** En. Sec. 13, Ch. 110, L. 1915; amd. Sec. 13, Ch. 155, L. 1917; re-en. Sec. 727, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1943; amd. Sec. 10, Ch. 64, L. 1959.

#### **Amendment**

The 1959 amendment, in the second sentence of the second paragraph substituted the words "election records" for the words "election list and books."

**23-1320. (734) Duty of elector if present on election day.** In case any elector who shall have taken advantage of the provisions of this act, and marked his ballot as an absent or physically incapacitated voter, as in this act provided, shall not leave his county, or shall return thereto or shall have recovered physical capacity to go to the polls on or before election day, and in time to allow him to go to the polls, to-wit, to the voting place in his precinct, and to be admitted therein before the close of the polls, if he shall be his duty so to go to the said voting place and to present himself to the judges of election at said voting place, and if he shall wilfully neglect so to do he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred (\$100.00) dollars or by imprisonment not more than thirty (30) days in the county jail or by both such fine and imprisonment. If such an elector so appears the judges of election shall note in the precinct register the fact of his appearance as well as whether or not he voted in person.

**History:** En. Sec. 20, Ch. 110, L. 1915; re-en. Sec. 20, Ch. 155, L. 1917; re-en. Sec. 734, R. C. M. 1921; amd. Sec. 17, Ch. 234, L. 1943; amd. Sec. 11, Ch. 64, L. 1959.

#### **Amendment**

The 1959 amendment in the last sentence of this section substituted "precinct register" for "poll-books and lists."

## **CHAPTER 14—VOTING BY ABSENT ELECTORS IN MILITARY SERVICE**

- Section 23-1401. Registration of absent electors in United States service.
- 23-1402. Definition of electors in United States service.
- 23-1403. The federal post card application.
- 23-1404. Oath for elector in the United States service.
- 23-1405. Classification of federal post card application.

**23-1401. Registration of absent electors in United States service.** Any elector of this state in the United States service who is absent from the



state of Montana and the county of which he or she is a resident shall be entitled to register by mailing to the county clerk a federal post card application filled out and signed under oath, which shall be the "OFFICIAL WAR REGISTRATION CARD" of the state.

**History:** En. Sec. 1, Ch. 99, L. 1943;  
amd. Sec. 6, Ch. 18, L. 1959.

**Amendment**

The 1959 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**23-1402. Definition of electors in United States service.** The phrase "elector in United States service" as used in the Revised Codes of Montana of 1947, as amended, shall include the following:

(1) Members of the armed forces while in the active service, and their spouses and dependants.

(2) Members of the merchant marine of the United States, and their spouses and dependents.

(3) Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

(4) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents.

**History:** En. Sec. 2, Ch. 99, L. 1943;  
amd. Sec. 7, Ch. 18, L. 1959.

**Amendment**

The 1959 amendment completely re-wrote this section. For text of section prior to amendment see parent volume.

**23-1403. The federal post card application.** The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be as follows:

(a) The cards shall be approximately nine and one-half ( $9\frac{1}{2}$ ) by four and one-eighth ( $4\frac{1}{8}$ ) inches in size.

(b) Upon one side, perpendicular to the long dimension of the card, there shall be printed in black type the following:

FILL OUT BOTH SIDES OF CARD  
POST CARD APPLICATION FOR ABSENTEE BALLOT

State or Commonwealth of \_\_\_\_\_

(Fill in name of State or Commonwealth)

(1) I hereby request an absentee ballot to vote in the coming election:  
(GENERAL) (PRIMARY)\* (SPECIAL) ELECTION  
(Strike out inapplicable words)

(2) \*If a ballot is requested for a primary election, print your political party affiliation or preference in this box: ☐

(If primary election is secret in your state, do not answer).

(3) I am a citizen of the United States, eligible to vote in above state, and am:

- a. A member of the armed forces of the United States ☐
- b. A member of the merchant marine of the United States ☐
- c. A member of a religious or welfare organization assisting service-men ☐
- d. A civilian employed by the United States government outside the United States (continental) ☐
- e. A spouse or dependent of a person listed in (a), (b), or (c) above ☐
- f. A spouse or dependent residing with a person described in (d) above ☐

(4) I was born on \_\_\_\_\_  
(Day) (Month) (Year)

(5) For \_\_\_\_\_ years preceding the above election my home (not military) residence in the above state has been \_\_\_\_\_

(Street and number or rural route, etc.)

The voting precinct or election district for this residence is \_\_\_\_\_

(Enter if known)

(6) Remarks: \_\_\_\_\_

(7) Mail my ballot to the following official address: \_\_\_\_\_

(Unit (Co., Sq., Trp., Bn., Etc.), Governmental Agency or Office)

(Military Base, Station, Camp, Fort, Ship, Airfield, etc.)

(Street No., APO, or FPO No.)

(City, Postal Zone, and State)

(8) I am NOT requesting a ballot from any other state and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

(9) \_\_\_\_\_  
(Signature of person requesting ballot)

(10) \_\_\_\_\_  
(Full name, typed or printed, with rank or grade, and service number)

(11) Subscribed and sworn to before me on \_\_\_\_\_

(Day, month and year)

(Signature of official  
administering oath)

(Typed or printed  
name of official  
administering oath.)

-----  
(Title or rank, service number and organization of administering official)  
-----

# INSTRUCTIONS

- A. Before filling out this form see your voting officer in regard to the voting laws of your state and absentee registration and voting procedure.
- B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
- C. Address card to proper state official. Your voting officer or commanding officer will furnish you with his title and address.
- D. Mail card as soon as your state will accept your application.
- E. No postage is required for the card.

(c) Upon the other side of the card there shall be printed in red type the following:

## FILL OUT BOTH SIDES OF THE CARD

-----  
(Name)

FREE OF U. S. POSTAGE

Including Air Mail  
-----

(Unit, Gov't Agency, or Office)  
-----

(Mil. Base, Station, Ship or Office)  
-----

(Street No., APO, or FPO No.)  
-----

(City, Postal Zone, State)  
-----

## OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL

To: -----

(Title of election official)  
-----

(County or township)  
-----

(City or Town, State)  
-----

**History:** En. Sec. 3, Ch. 99, L. 1943;  
amd. Sec. 8, Ch. 18, L. 1959.

### Amendment

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

**23-1404. Oath for elector in the United States service.** Any oath required for electors in the United States service to register, request a ballot or vote may be administered and attested, within or without the United States, by any commissioned officer in the active service of the armed forces, or any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, or any civilian official empowered by state or federal law to administer oaths. No official seal

need be affixed to said oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking said oath except to the extent required by the federal post card application.

**History:** En. Sec. 4, Ch. 99, L. 1943; **Amendment**  
amd. Sec. 9, Ch. 18, L. 1959.

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

**23-1405. Classification of federal post card application.** Upon receipt by the county clerk of a federal post card application properly filled out and signed under oath, the county clerk shall classify such federal post card application according to the precinct in which the elector resides, and shall arrange the cards in each precinct in alphabetical order. The county clerk shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by said elector. Immediately upon entry upon the official register of the county of the name of the elector in the United States service the county clerk shall send to him or her by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days next preceding the election another federal post card application to his county clerk or city clerk or town clerk.

**History:** En. Sec. 5, Ch. 99, L. 1943; **Amendment**  
amd. Sec. 10, Ch. 18, L. 1959.

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

## CHAPTER 16—VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

Section 23-1608. City and county clerks to set up machines for use.

23-1608A. Ballot—arrangement on machine.

### **23-1608. (764) City and county clerks to set up machines for use.**

(1) The city or county clerks of each city or county in which a voting machine is to be used shall cause the proper ballots to be put upon each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set and adjusted ready for use in voting when delivered at the precinct, and for the purpose of so labeling the machines, putting in order, setting and adjusting the same, they may employ one or more competent persons, and they shall cause the machine so labeled, in order and set and adjusted, to be delivered at the voting precinct, together with all necessary furniture and appliances that go with the same in the room where the election is to be held in the precinct, in time for the opening of the polls on election day; provided, however, that a shield of tin painted black made to conform with the shape of the keys or levers on said voting machine, shall be placed over the keys or levers not in use on the face of the ballot of the voting machine; said shields to be plainly marked with the words "not in use."

(2) In primary elections a separate row or column shall be assigned to each political party and at least one row or column shall separate the rows assigned to the two major political parties as defined in



section 23-1107, Revised Codes of Montana, 1947. In this row or column shall be placed the nonpartisan judicial ballot. In general elections the ballot on the voting machines shall be arranged and the names of the candidates for each office rotated to conform as nearly as possible to the requirements for paper ballots set forth in section 23-1107, Revised Codes of Montana, 1947. The names of the candidates of the two major parties as defined in section 23-1107, Revised Codes of Montana, 1947, shall appear in and be rotated between the first two horizontal rows or vertical columns, and the names of the candidates of minor parties and independent candidates shall appear in and be rotated between succeeding rows or columns; provided, however, that the arrangement of the ballot shall be uniform on all machines in the same precinct. The party designation of each candidate shall be printed after or below his name in type as large as the design of the machine will allow.

(3) The nonpartisan judicial ballot shall be placed in the first two horizontal or vertical rows or columns in the same position as prescribed for judicial candidates in section 23-1111, Revised Codes of Montana, 1947.

(4) The judges shall compare the ballots on the machine with the sample ballot, see that they are correct, examine and see that all the counters, if any, in the machine are set at zero, and that the machine is otherwise in perfect order, and they shall not thereafter permit the machine to be operated or moved except by electors in voting, and they shall also see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine, if such machine be so arranged.

**History:** En. Sec. 8, Ch. 168, L. 1907; Sec. 616, Rev. C. 1907; amd. Sec. 2, Ch. 246, L. 1921; re-en. Sec. 764, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1959.

subds. (2) and (3); and deleted from the end of present subd. (1) a proviso for a blank row of keys between the major parties and a proviso and a sentence requiring that parties be listed on machines in the same order as on paper ballots.

#### **Amendment**

The 1959 amendment divided the section into subdivisions; inserted present

**23-1608A. Ballot—arrangement on machine.** The arrangement of the general election ballot on voting machines with horizontal rows shall be, as nearly as possible, in the following form:

INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS	CONSTITUTIONAL AMENDMENT				
OFFICES	FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE PRESI- DENT OF THE UNITED STATES Vote for one	UNITED STATES SENATOR Vote for one	REPRESENT- ATIVE IN CONGRESS Vote for one	GOVERNOR Vote for one	(Same for Lieutenant Governor, Secretary of State, Attorney General, State Treas- urer, State Auditor, Railroad and Public Service Commis- sioners, State Superin- tendent of Public In- struction, Clerk of the Supreme Court, Chief Justice of the Supreme Court, As- sociate Justice of the Supreme Court and District Judges)
CANDIDATES	Democrat JOHN DOE for President ALBERT ORE for Vice President John Doe, Ella Moe, Jane Roe, Tom Voe	TOM COE Republican	JOHN DOE Democrat	BILL COE Republican	
CANDIDATES	Republican FRANK MOE for President HARRY COE for Vice President Jane Doe, John Moe, Tom Roe, John Voe	JACK MOE Democrat	MIKE ORE Republican	TOM ROE Democrat	
CANDIDATES		JOE ROE Socialist			
CANDIDATES					

FOR AGAINST		INITIATIVE NO. 1					FOR AGAINST	
STATE SENATOR Vote for one		MEMBER OF THE HOUSE OF REPRESENTATIVES Vote for four					COUNTY COMMISSIONER Vote for one	
JOE COE Republican		JACK BOE Democrat	PETE COE Democrat	BILL DOE Republican	FRANK HOE Democrat	JOHN DOE Democrat		
TOM DOE Democrat		ALLEN JOE Republican	OLE KOE Republican	JOHN MOE Democrat	EARL ROE Republican	MIKE ROE Republican		
		MIKE FOE Independent	JIM GOE Socialist	BILL LOE Prohibition				

(Same for all  
County and Town-  
ship offices.)

The arrangement of the general election ballot on voting machines with vertical columns shall be, as nearly as possible, in the following form :

Offices	Candidates	Candidates	Candidates	Candidates	Initiatives, Referendums and Constitutional Amendments	
FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES Vote for one	Democrat JOHN DOE for President ALBERT ORE for Vice-President John Doe, Ella Mae Jane Roe, Tom Voe	Republican FRANK MOE for President HARRY COE for Vice-President Jane Doe, John Moe Tom Roe, John Voe				CONSTITUTIONAL AMENDMENT
UNITED STATES SENATOR Vote for one	TOM COE Republican	JACK MOE Democrat	JOE HOE Socialist		FOR	
REPRESENTATIVE IN CONGRESS Vote for one	JOE DOE Democrat	MIKE ORE Republican			AGAINST	
GOVERNOR Vote for one	BILL COE Republican	TOM ROE Democrat				
(Same for Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, State Auditor, Railroad and Public Service Commissioners, State Superintendent of Public Instruction, Clerk of the Supreme Court, Chief Justice of the Supreme Court, Associate Justice of the Supreme Court and District Judges.)						
STATE SENATOR Vote for one	JOE COE Republican	TOM DOE Democrat				INITIATIVE No. 1
MEMBER OF THE HOUSE OF REPRESENTATIVES Vote for four	JACK BOE Democrat	ALLEN JOE Republican	MIKE FOE Independent			
	PETE COE Democrat	OLE KOE Republican	JIM GOE Socialist		FOR	
	BILL DOE Republican	JOE MOE Democrat	BILL LOE Prohibition		AGAINST	
	FRANK HOE Democrat	EARL ROE Republican				
COUNTY COMMISSIONER Vote for one	JOHN DOE Democrat	MIKE ROE Republican				
(Same for all County and Township offices.)						

History: En. 23-1608A by Sec. 2, Ch. 20, L. 1959.

Title of Act

An act to amend section 23-1608, Revised Codes of Montana, 1947, relating to the arrangement and adjustment of voting machines; to provide that the ballot used on voting machines shall be arranged to conform as closely as possible to the arrangement of paper ballots used in precincts which do not have voting machines; to provide for the placing of the names of nonpartisan judicial candidates in a position on voting machines similar to the position occupied by non-

partisan judicial candidates upon paper ballots; and repealing section 23-2013, Revised Codes of Montana, 1947; providing for an effective date.

Repealing Clause

Section 3 of Ch. 20, Laws 1959 read "Section 23-2013, Revised Codes of Montana, 1947, is hereby repealed."

Effective Date

Section 4 of Ch. 20, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 10, 1959.



## CHAPTER 17—ELECTION RETURNS

- Section 23-1702. Mode of canvassing.  
 23-1703. Where ballots are in excess of names on poll-books.  
 23-1709. Election returns by judges—how made.  
 23-1714. Disposition of returns prior to canvass of vote.  
 23-1715. Clerk to file in his office books, papers, etc.

**23-1702... (775) Mode of canvassing.** The canvass must commence by a comparison of the poll-books from the commencement, and the correction of any mistakes that may be found therein, until they are found to agree. The judges must then take out of the box the ballots unopened except to ascertain whether each ballot is single, and count the same to determine whether the number of ballots corresponds with the number of names on the poll-books. If two or more ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed, and if, on comparing the count with the poll-books and further considering the appearance of such ballots, a majority of the judges are of the opinion that the ballots thus folded together were voted by one elector, they must be rejected; otherwise they must be counted.

**History:** Ap. p. Sec. 23, p. 380, Ban-nack Stat.; re-en. Sec. 23, p. 464, Cod. Stat. 1871; re-en. Sec. 22, p. 75, L. 1876; re-en. Sec. 546, 5th Div. Rev. Stat. 1879; re-en. Sec. 1028, 5th Div. Comp. Stat. 1887; amd. Sec. 1401, Pol. C. 1895; re-en. Sec. 573, Rev. C. 1907; re-en. Sec. 775,

R. C. M. 1921; amd. Sec. 12, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1253.

**Amendment**

The 1959 amendment substituted the words "poll-books" for "poll-lists" each time they appear.

**23-1703. (776) Where ballots are in excess of names on poll-books.** If the ballots then are found to exceed in number the whole number of names on the poll-books, they must be placed in the box (after being purged in the manner above stated), and one of the judges must, publicly, and without looking in the box, draw therefrom singly and destroy unopened so many ballots as are equal to such excess. And the judges must make a record on the poll-books of the number of ballots so destroyed.

**History:** Ap. p. Sec. 24, p. 380, Ban-nack Stat.; re-en. Sec. 24, p. 464, Cod. Stat. 1871; re-en. Sec. 23, p. 76, L. 1876; re-en. Sec. 537, 5th Div. Rev. Stat. 1879; re-en. Sec. 1029, 5th Div. Comp. Stat. 1887; amd. Sec. 1402, Pol. C. 1895; re-en. Sec. 574, Rev. C. 1907; re-en. Sec. 776,

R. C. M. 1921; amd. Sec. 13, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1255.

**Amendment**

The 1959 amendment substituted the words "poll-books" for the words "poll-lists" each time they appear.

**23-1709. (782) Election returns by judges—how made.** The judges must, before they adjourn, inclose in a strong envelope, securely sealed and directed to the county clerk, the precinct registers, all certificates of registration received by them, the lists of persons challenged, both of the poll-books, both of the tally-sheets, and the official oaths taken by the judges and clerks of election; and must inclose in a separate package or envelope, securely sealed and directed to the county clerk, all unused ballots with the numbered stubs attached; and must also inclose in a separate package or envelope, securely sealed and directed to the county clerk, all ballots voted, including all voted ballots which, for any reason, were not

counted or allowed, and all detached stubs from ballots voted, and endorse on the outside thereof "ballots voted." Each of the judges must write his name across the seal of each of said envelopes or packages. The ballot box must be returned to the county clerk.

**History:** Ap. p. Sec. 1408, Pol. C. 1895; amd. Sec. 6, Ch. 88, L. 1907; Sec. 580, Rev. C. 1907; re-en. Sec. 782, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1937; amd. Sec. 1, Ch. 65, L. 1943; amd. Sec. 1, Ch. 23, L. 1945; amd. Sec. 14, Ch. 64, L. 1959.

#### **Amendment**

The 1959 amendment substituted "precinct registers" for the words "check-lists" in this section.

**23-1714. (788) Disposition of returns prior to canvass of vote.** The envelopes containing the precinct registers, certificates of registration, poll-books, tally-sheets, and oaths of election officers must be filed by the county clerk and be kept by him, unopened and unaltered, until the board of county commissioners meet for the purpose of canvassing the returns, when he must produce them before such board, where the same shall be opened.

**History:** Ap. p. Sec. 1414, Pol. C. 1895; amd. Sec. 10, Ch. 88, L. 1907; Sec. 586, Rev. C. 1907; re-en. Sec. 788, R. C. M. 1921; amd. Sec. 15, Ch. 64, L. 1959.

#### **Amendment**

The 1959 amendment substituted the words "precinct registers" for the words "check-lists" and made the word poll-book plural.

**23-1715. (789) Clerk to file in his office books, papers, etc.** As soon as the returns are canvassed, the clerk must file in his office the poll-books, election records and the papers produced before the board from the package mentioned in the next preceding section.

**History:** En. Sec. 1415, Pol. C. 1895; re-en. Sec. 587, Rev. C. 1907; re-en. Sec. 789, R. C. M. 1921; amd. Sec. 16, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1268.

#### **Amendment**

The 1959 amendment substituted the words "poll-books, election records" for the words "poll-book, lists."

### **CHAPTER 18—CANVASS OF ELECTION RETURNS— RESULTS AND CERTIFICATES**

Section 23-1808. Certificates issued by the clerk.  
23-1813. How transmitted.

**23-1808. (797) Certificates issued by the clerk.** The clerk of the board of county commissioners must immediately make out and deliver to such persons (except to the person elected district judge) a certificate of election signed by him and authenticated with the seal of the board of county commissioners, and said certificate shall contain therein written notice that the official bond of the elected or appointed official must be filed within thirty (30) days after notice of election or appointment, and that failure to file such bond shall cause the office to become vacant.

**History:** En. Sec. 7, p. 302, L. 1891; re-en. Sec. 1436, Pol. C. 1895; re-en. Sec. 594, Rev. C. 1907; re-en. Sec. 797, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1959. Cal. Pol. C. Sec. 1284.

#### **Amendment**

The 1959 amendment added the portion of this section beginning with the words "and said certificate."

**23-1813. (802) How transmitted.** The clerk must seal up such abstract, endorse it "Election Returns," and without delay transmit it to the secretary of state by certified mail.

**History:** En. Sec. 11, p. 303, L. 1891; re-en. Sec. 1441, Pol. C. 1895; re-en. Sec. 599, Rev. C. 1907; re-en. Sec. 802, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1959. Cal. Pol. C. Sec. 1289.

**Repealing Clause**

Section 2 of Ch. 87, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Amendment**

The 1959 amendment substituted "by certified mail" for "by mail, registered."

CHAPTER 20—NONPARTISAN NOMINATION AND ELECTION  
OF JUDGES OF SUPREME COURT AND DISTRICT COURTS

**23-2013. (812.14) Repealed.**

**Repeal**

This section (Sec. 14, Ch. 182, L. 1935), relating to the arrangement of the judi-

cial ballot when voting machines are used, was repealed by Sec. 3, Ch. 20, Laws 1959, effective February 10, 1959.

## TITLE 25—FEES AND SALARIES

- Chapter 2. Fees of county officers, 25-226, 25-231.  
3. Fees and salaries of justices of the peace and constables, 25-306, 25-309.  
5. Salaries of state officers, deputies and employees, 25-501, 25-501.1, 25-508.  
6. Salaries of county officers, deputies and employees, 25-605.

### CHAPTER 1—FEES OF STATE OFFICERS

#### 25-101. (4912) Repealed.

##### Repeal

This section (Sec. 4630, Pol. C. 1895; Sec. 3163, Rev. C. 1907; Sec. 4912, R. C. M. 1921), relating to the fees of secretary

of state and state auditor principally on insurance matters, was repealed by Sec. 673, Ch. 286, Laws 1959, effective January 1, 1961.

### CHAPTER 2—FEES OF COUNTY OFFICERS

- Section 25-226. Fees of sheriff.  
25-231. Fees of county clerks.

#### 25-201. (4864) Disposal of fees collected by county officers.

##### References

Cited or applied in State v. Hale, 129 M 449, 291 P 2d 229, 234.

#### 25-203. (4887) Fees must be paid into county treasury, when.

##### References

Cited or applied in State v. Hale, 129 M 449, 291 P 2d 229, 235.

#### 25-226. (4916) Fees of sheriff.

(1) and (2). \* \* \* [Subdivisions (1) and (2), same as parent volume.]

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad, he shall receive eleven cents (11¢) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

(4). \* \* \* [Same as parent volume.]

History: En. Sec. 4634, Pol. C. 1895; 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R. C. M. 121, L. 1933; amd. Sec. 1, Ch. 139, L.



1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957.

#### Compiler's Note

Section 1 of Ch. 82, Laws 1957 amended section 16-2723.

#### Amendment

The 1957 amendment in subd. (3) increased the rate received per mile from nine cents to eleven cents.

#### Repealing Clause

Section 3 of Ch. 82, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 4 of Ch. 82, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 2, 1957.

### 25-227. (4886) Fees for board of prisoners.

#### In General

An information which charges that defendants presented for allowance to the board of county commissioners a "certain false and fraudulent monthly report concerning board furnished Missoula County prisoners" is insufficient to state an of-

fense unless accompanied by a statement of facts upon which the charges of falsehood or fraud rest. *State v. MacLean*, 129 M 500, 291 P 2d 250, 252. (Concurring and dissenting opinion, 129 M 500, 291 P 2d 250, 252.)

### 25-229. (4910) Sheriff falsely representing his expenses, etc.

#### Information

Information which charges that defendants presented for allowance to the board of county commissioners a certain false and fraudulent monthly report concerning board furnished Missoula County prisoners is insufficient to state an offense

unless accompanied by a statement of facts upon which the charges of falsehood or fraud rest. *State v. MacLean*, 129 M 500, 291 P 2d 250, 252. (Concurring and dissenting opinion, 129 M 500, 291 P 2d 250, 252.)

**25-231. (4917) Fees of county clerks.** The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

For first folio, sixty cents (60¢) and for each subsequent folio or fraction thereof, thirty cents (30¢);

For each entry in index, twenty cents (20¢);

For certificate that such instrument has been recorded with seal affixed, one dollar (\$1.00);

For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage;

For each folio, forty cents (40¢);

For each entry in index, twenty cents (20¢);

For certificate that such mortgage, assignment or release has been recorded with seal affixed, one dollar (\$1.00);

For recording and indexing each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including certificate that such instrument has been recorded with seal affixed, four dollars (\$4.00);

For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, two dollars (\$2.00) for the first mining claim in said affidavit, and fifty cents (50¢) for each additional mining claim described and included therein;

For filing and indexing each chattel mortgage, affidavit of renewal of chattel or real estate mortgage, assignment or release of chattel mortgage, a writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar (\$1.00);

For filing and indexing each certificate of incorporation or annual statement of any corporation, two dollars (\$2.00);

For recording and platting each town site or map;

For each lot up to and including one hundred, fifty cents (50¢);

For each additional lot in excess of one hundred, ten cents (10¢);

For recording the field notes of survey of any town site, per folio, fifty cents (50¢).

Provided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be two dollars (\$2.00) for each page or fraction thereof of said instrument.

For a copy of any record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar (\$1.00); provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of one dollar (\$1.00) for his certificate and seal.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

For each entry of discharge or satisfaction of mortgage, lien, or other instrument on the margin of record thereof, or upon the original instrument, and noting same in the indexes concerned, fifty cents (50¢);

For administering an oath with certificate and seal he shall make no charge;

For taking and certifying an acknowledgment, with seal affixed, for signature thereto he shall make no charge;

For recording and indexing any instrument which may be recorded pursuant to the provisions of section 73-104, Revised Codes of Montana, 1947, and which pertains to land allotted to an Indian or land within an Indian Reservation, except fee patents, he shall make no charge;

For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

On each instrument delivered to him for recording, it shall be the duty of the county clerk to endorse thereon all charges made by him for such service and such endorsement shall be recorded as a part of the instrument in his office in order that the state examiner may verify such charges from time to time and may see that they have been properly entered on the fee book or reception record in the county clerk's office.

**History:** En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959.

#### **Compiler's Note**

Section 1 of Ch. 148, Laws 1957 amended section 73-104.

#### **Amendments**

The 1957 amendment added the third paragraph from the end of this section.

The 1959 amendment doubled the amount of the fees received by the county clerk for the services performed.

#### Repealing Clauses

Section 3 of Ch. 148, Laws 1957 and Sec. 2 of Ch. 9, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

Section 25-306. Salaries of justices of the peace in certain townships—hours—quarters.

25-309. Fees of constable.

**25-306. (4929) Salaries of justices of the peace in certain townships—hours—quarters.** Justices of the peace in townships having a population of ten thousand (10,000) people, and not exceeding fifteen thousand (15,000) people, shall each receive a salary of two thousand eight hundred dollars (\$2,800.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people, and not exceeding eighteen thousand (18,000) people, shall each receive a salary of three thousand dollars (\$3,000.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people, shall each receive a salary of three thousand six hundred dollars (\$3,600.00) per annum, payable monthly from the county treasury; justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 25-304 of this code; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o'clock A.M. to 12 o'clock M., and from 1 o'clock P.M. to 5 o'clock P.M. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from 1 o'clock P.M. to 5 o'clock P.M. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion, select suitable quarters for such justices and may, in its discretion, pay for same from money in the county treasury.

**History:** En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1949; amd. Sec. 1, Ch. 51, L. 1953; amd. Sec. 1, Ch. 47, L. 1957.

#### Amendment

The 1957 amendment increased the salaries of justices of the peace in townships having a population of 10,000 people and not exceeding 15,000 people from \$2,200 to \$2,800; in townships of more than 15,000 people and not exceeding 18,000 people from \$2,400 to \$3,000; in townships of more than 18,000 people from \$2,900 to \$3,600. The 1957 amendment deleted the words "and not more than twenty-two thousand (22,000) people" which ap-

peared after "(18,000) people" the second time it appears and deleted the words "Justices of the peace in townships having a population of more than twenty-two thousand people shall each receive a salary of three thousand two hundred dollars (\$3,200.00), payable monthly from the county treasury; and" which appeared immediately before the words "justices of the peace in such townships shall receive no other additional fees."

#### Repealing Clause

Section 2 of Ch. 47, Laws 1957 repealed all acts and parts of acts in conflict therewith.



**25-309. (4932) Fees of constable.** For serving summons, including copy on each defendant, besides mileage, fifty cents.

For serving subpoena, including copy on each person, besides mileage, twenty cents.

For all services in summoning a jury and taking charge of same, two dollars.

For all services in serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, including all copies, one dollar.

For the expense in taking and keeping possession of or preserving property under attachment, execution, or other process, the same fees and upon the same conditions as allowed to the sheriff.

• For taking and receiving undertaking in any case in which he is authorized, one dollar.

For serving every notice, rule or order, besides mileage, including copy, one dollar.

For advertising any property for sale under execution, exclusive of costs of publication, one dollar.

For serving writ of possession, besides mileage, two dollars.

For all services in trial of right of property or damages, besides mileage, three dollars.

For commissions for receiving and paying over money on execution or other process where property has been levied on and sold, two per cent; when collected without sale, one per cent.

For mileage, the same as sheriff and under the same conditions.

For executing in duplicate a certificate of sale exclusive of the fee for filing, one dollar.

For drawing and executing a constable's deed, including acknowledgment, three dollars.

For making every arrest in a criminal proceeding, or executing a search warrant, besides mileage, one dollar and fifty cents.

For all services in summoning and taking charge of a jury, two dollars.

For serving a subpoena, including copy on each person, besides mileage, twenty cents.

For every mile necessarily traveled in executing any warrant, serving subpoena, or taking a person before a magistrate or to jail, the same mileage as in civil actions, and under the same conditions, and in addition, in serving a subpoena or warrant when two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but one mileage must be charged, as provided for the mileage of sheriffs in civil actions.

When two or more persons are brought before a magistrate or to jail at the same time, or might have been so brought, the officer must be allowed but one mileage.

For conveying a person when under arrest, the actual expense incurred in the transportation of such person must be allowed by the board of county commissioners, but the officer must pay his own expenses out of his mileage.



The total amount of fees allowed in criminal cases by the board of county commissioners must not exceed five hundred dollars (\$500.00) in any one year. The excess must be paid into the contingent fund of the county treasury.

That constables in townships having a population of twelve thousand (12,000) people and not exceeding twenty thousand (20,000) people, shall each receive a salary of \$900.00 per annum, payable monthly from the county treasury. Constables in townships having a population of more than twenty thousand (20,000) people shall each receive a salary of \$2,400.00 per annum, payable monthly from the county treasury, and constables in such townships where the population is twelve thousand (12,000) people and not more than thirty-five thousand (35,000) people shall receive no other fees for civil suits or criminal actions except mileage in the performance of their duties. Any such fees received by the constables shall be turned over to the county treasurer.

**History:** En. Sec. 4643, Pol. C. 1895; re-en. Sec. 3177, Rev. C. 1907; re-en. Sec. 4932, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1935; amd. Sec. 1, Ch. 160, L. 1957.

population of more than twenty thousand from \$1,500 to \$2,400.

#### Repealing Clause

Section 2 of Ch. 160, Laws 1957 repealed all acts or parts of acts in conflict therewith.

#### Amendment

The 1957 amendment increased the salary of constables in townships having a

### CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

- Section 25-501. Salaries of elected state officials.  
 25-501.1. Salary to be for all services.  
 25-508. Traveling expenses of officers attending conventions.

**25-501. Salaries of elected state officials.** The annual salaries paid to the various elected officials of the state of Montana shall be as follows:

Governor	\$14,000.00
Chief justice of the supreme court	11,500.00
Justices of the supreme court, each	11,500.00
Attorney general	9,500.00
State auditor	8,000.00
Superintendent of public instruction	8,500.00
Railroad commissioner	8,000.00
State treasurer	8,000.00
Secretary of state	8,000.00
Clerk of the supreme court	6,500.00

**History:** En. Sec. 1, Ch. 202, L. 1959.

#### Compiler's Note

This section is substituted for prior section 25-501 which was repealed by Sec. 3, Ch. 202, Laws 1959, as the subject-matter is identical.

#### Repeal

Former section 25-501 (Sec. 1, Ch. 182, L. 1949; amd. Sec. 1, Ch. 237, L. 1955), relating to salaries of state officers, was

repealed by Sec. 3, Ch. 202, Laws 1959. Section 1 of Ch. 202, Laws 1959 has been given the same section number and substituted therefor by the compiler.

#### Title of Act

An act to provide for salary schedules for various elected officials and administrative heads, whatever title they may have, of various boards, bureaus and commissions; making it unlawful to accept a subordinate position at an increased sal-

ary to avoid the intent of this act; defining the scope of salaries, but that such scope shall not limit certain longevity pay; repealing sections 25-501, 25-502, 25-

503, and 25-505 of the Revised Codes of Montana, 1947; and containing a repealing clause.

**25-501.1. Salary to be for all services.** The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered ex officio as a member of any board, commission or committee, but shall not include actual and necessary traveling, lodging and subsistence expenses incidental to his official duties; provided, however, that this provision shall not apply to the salary of the supervisor of the highway patrol so as to deprive him of his length-of-service salary increase as provided by section 31-105 of these codes.

**History:** En. Sec. 2, Ch. 202, L. 1959.

**Repealing Clauses**

Section 3 of Ch. 202, Laws 1959 read "That sections 25-501, 25-502, 25-503, and

25-505 of the Revised Codes of Montana, 1947, are hereby repealed."

Section 4 of Ch. 202, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**25-502. (437) Repealed.**

**Repeal**

This section (Sec. 1, Ch. 107, L. 1919; amd. Sec. 2, Ch. 57, L. 1935), relating to the salaries of clerk of board of examiners,

state accountant and clerk of consolidated boards, was repealed by Sec. 3, Ch. 202, Laws 1959.

**25-503. (438) Repealed.**

**Repeal**

This section (Sec. 2, Ch. 107, L. 1919), relating to the salaries of state examiner,

his assistants, deputies, clerks and the private secretary to the governor, was repealed by Sec. 3, Ch. 202, Laws 1959.

**25-505. (440) Repealed.**

**Repeal**

This section (Sec. 1, Ch. 40, L. 1915, and as affected by later acts), relating

to the salaries of deputy state officers, was repealed by Sec. 3, Ch. 202, Laws 1959.

**25-508. (443) Traveling expenses of officers attending conventions.**

(1) Hereafter no state, county, city or school district officer or employee of the state or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers save and except for attendance upon such convention, meeting or other gatherings as said officer may by virtue of his office be required by law to attend, provided that nothing herein shall prohibit the state board of examiners from authorizing the payment of the necessary traveling expenses of any state officer or employee, whenever in the judgment of the board an emergency exists, and the public interest demands, which reasons are to be spread on the minutes of the board of examiners, and provided further, that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees, or any other strictly educational association and authorize the payment of dues to such association, and the necessary traveling expenses of an employee, or one (1) member of said board, to attend meetings of such association, or

other meetings called for the express purpose of considering educational matters.

(2) Provided, further, three (3) members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; provided also that county attorneys and sheriffs are hereby authorized to attend their respective meeting or convention held within the state and are allowed actual traveling expenses not oftener than once a year for attending same.

(3) Provided, further, that nothing herein shall be construed to prevent any city or town council, commission or other governing body from paying membership fees and dues in any organization of city and town officials whose purpose is improvement of laws relating to city and town government and their better and more economical administration, and the necessary expense of any regular officer or employee of such city or town in attending any convention or meeting of such organization upon the direction of such council, commission, or other governing body by order upon its minutes stating that the public interest requires such attendance; such payment of membership fees, dues and/or expense to be made from such fund of the city or town as the council, commission or other governing body shall direct by such order, upon claim presented, audited and allowed as are other claims against such city or town.

**History:** En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957.

#### **Amendment**

The 1957 amendment in subd. (2) substituted "three (3) members" for "one (1) member."

#### **Repealing Clause**

Section 2 of Ch. 184, Laws 1957 repealed all acts and parts of acts in conflict therewith.

## **CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES**

Section 25-605. Salaries of certain county officers.

**25-605. Salaries of certain county officers.** The salaries of county treasurers, county clerks, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	\$1,614	Below \$2,000,000	\$1,614
3,000 to 3,999	1,682	\$2,000,000 to 2,999,999	1,682
4,000 to 4,999	1,752	3,000,000 to 3,999,999	1,752
5,000 to 5,999	1,822	4,000,000 to 4,999,999	1,822
6,000 to 6,999	1,905	5,000,000 to 5,999,999	1,905



Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
7,000 to 7,999	1,948	6,000,000 to 6,999,999	1,948
8,000 to 8,999	2,012	7,000,000 to 7,999,999	2,012
9,000 to 9,999	2,076	8,000,000 to 9,999,999	2,076
10,000 to 12,499	2,196	10,000,000 to 11,999,999	2,196
12,500 to 14,999	2,263	12,000,000 to 13,999,999	2,263
15,000 to 17,499	2,329	14,000,000 to 15,999,999	2,329
17,500 to 19,999	2,395	16,000,000 to 17,999,999	2,395
20,000 to 24,999	2,406	18,000,000 to 19,999,999	2,406
25,000 to 29,999	2,494	20,000,000 to 22,499,999	2,494
30,000 to 39,999	2,572	22,500,000 to 24,999,999	2,572
40,000 to 49,999	2,663	25,000,000 to 29,999,999	2,663
50,000 to 59,999	2,755	30,000,000 to 34,999,999	2,755
60,000 to 69,999	2,849	35,000,000 to 39,999,999	2,849
70,000 to 79,999	2,944	40,000,000 to 44,999,999	2,944
80,000 to 89,999	3,052	45,000,000 to 49,999,999	3,052
90,000 to 99,999	3,114	50,000,000 to 54,999,999	3,114
100,000 and over	3,176	55,000,000 to 59,999,999	3,176
		60,000,000 to 64,999,999	3,263
		65,000,000 to 69,999,999	3,325
		70,000,000 to 74,999,999	3,419
		75,000,000 to 79,999,999	3,513

The total salary paid to county treasurers, county clerks, county attorneys, sheriffs, county assessors, county superintendents of schools, and county surveyors in counties where county surveyors receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be the sum of the salary shown in Column A based on population when added to the salary shown in Column B based on taxable valuation.

**History:** En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959.

#### Amendments

The 1957 amendment added county attorneys and sheriffs to the list of county officers; increased all salaries (for comparison, see parent volume); under Population of County substituted "80,000 to 89,999" for "80,000 and over" and added "90,000 to 99,999" and "100,000 and over"; under Taxable Valuation of County added the last two classifications and deleted from the last paragraph a proviso which read "provided that the minimum salary to be paid under the foregoing schedule

will not be less than twenty-nine hundred eight (\$2908.00) dollars per annum."

The 1959 amendment added the classifications "70,000,000 to 74,999,999" and "75,000,000 to 79,999,999" under the Taxable Valuation of County and added the corresponding salary in Column B for those classifications.

#### Repealing Clauses

Section 2 of Ch. 22, Laws 1957 read "That sections 25-606 and 25-607, Revised Codes of 1947, as amended by section 2 and section 3 of chapter 222, Session Laws of 1953, and all other acts and parts of acts in conflict herewith are hereby repealed."

Section 2 of Ch. 66, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### 25-606, 25-607. Repealed.

##### Repeal

These sections (Secs. 2, 3, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Secs. 2, 3, Ch. 222, L. 1953), relating to

the salary of sheriff and county attorney, were repealed by Sec. 2, Ch. 22, Laws 1957.



## TITLE 26—FISH AND GAME

- Chapter 1. Fish and game commission and wardens—creation—powers and duties, 26-103 to 26-105, 26-107, 26-135, 26-136.
2. Fishing and hunting licenses, 26-201, 26-202.1, 26-202.3, 26-222.
  3. Restrictions on taking fish and game—open and closed seasons, 26-332.
  4. Beaver—trapping—license—protection, 26-401.
  5. Protection of certain wild birds—sale of confiscated birds and animals, 26-510 to 26-512.
  7. Shipment of animals from state, 26-703.
  9. Outfitter's license—taxidermist's license, 26-907.

### CHAPTER 1—FISH AND GAME COMMISSION AND WARDENS— CREATION—POWERS AND DUTIES

- Section 26-103. Meetings.
- 26-104. Powers and duties of commission.
- 26-105. Compensation of commissioners.
- 26-107. State fish and game wardens—appointment—qualifications.
- 26-135. Wild animals damaging property—investigation—special season—destruction by commission—allowing holders of property to kill.
- 26-136. Meat of wild animals so killed—disposition.

**26-103. (3652) Meetings.** The members of the commission shall within thirty (30) days after their appointment and annually thereafter meet and organize by electing from its membership a chairman and shall hold quarterly or other meetings for the transaction of business, at such times and places it may deem necessary and proper, said meetings to be called by the chairman, or by a majority of the commission, and to be held at the time and place specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all the business transacted by it. The chairman and secretary, hereinafter designated, shall sign all orders, minutes or documents for the commission. The principal offices of the commission shall be located near the capitol building in Helena, and suitable and adequate rooms therefor, together with janitor services, light, heat and water shall be furnished by the state of Montana, rental shall be charged at two dollars (\$2.00) per square foot per year for the total space occupied. Such charge to the commission shall be in effect until such time as the commission shall provide other building or buildings. Such rental collected shall be deposited to the credit of the state general fund. The commission, upon the approval of the board of examiners, is empowered to construct, acquire, erect, equip, enlarge and improve or purchase buildings suitable for its needs to be located at the seat of the state government.

**History:** En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959.

#### Amendments

The 1957 amendment substituted the word "near" for the word "in" in the sentence beginning "The principal offices \* \* \*" and added all that portion of this section beginning with the words "until

such time as the commission \* \* \* in this same sentence.

The 1959 amendment deleted the words "with necessary furnishings" which appeared before the words "janitor service" and substituted the three sentences next to the last sentence, for a clause which read "without charge to the commission

until such time as the commission shall provide other building or buildings."

#### Repealing Clauses

Section 2 of Ch. 52, Laws 1957 and Sec. 2 of Ch. 119, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### 26-104. (3653) Powers and duties of commission.

(1) to (9). \* \* \* [Subsections (1) to (9), same as parent volume.]

(10) It shall have the authority to purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install in irrigating ditches to prevent fish entering said ditches.

(11) to (14). \* \* \* [Subsections (11) to (14), same as parent volume.]

(15) It shall have authority to fix seasons and bag limits, open or close, shorten or lengthen seasons on any species of game, bird, fish or furbearing animal as defined by section 26-201 of this code, and to declare areas open to the hunting of deer, antelope and elk by bow and arrow permit holders, and during times when only bow and arrows may be used, to hunt deer, antelope and elk in such areas; it is authorized to declare areas open to deer hunting where shotguns only may be used to hunt or kill deer; and it is authorized to declare areas which may be open to special license holders only, and issue special licenses in a limited number when it shall determine, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game animals, or to declare such a special season and issue special licenses whenever game animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of such property, and in determining to whom such licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system.

(16) to (24). \* \* \* [Subsections (16) to (24), same as parent volume.]

(25). \* \* \* [Deleted by Sec. 1, Ch. 36, Laws 1959.]

(26) It shall have authority to promulgate and enforce rules and regulations governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with a federal or state agency or private owner.

Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating swimming, boating, water skiing, surf boarding, picnicking, camping, sanitation and use of firearms on such reservoirs or at designated areas along the shore of such reservoirs. These rules shall be subject to review and approval by the state board of health as to public health and sanitation before becoming effective. Copies of such rules shall show such endorsement.

**History:** En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. Sec. 1, Ch. 157, L. 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, ch. 36, L. 1959; Subsec. (26) added by Sec. 1, Ch. 96, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 legislature, once by Ch. 36, approved February 25, 1959 and once by Ch. 96, approved March 2, 1959. Neither amendment carried a specific effective date nor did either act mention the amendment by the other act. As each act amended the section in different particulars the changes made by each are incorporated in this section by the compiler.

#### Amendments

The 1957 amendment added subsec. (25) which read: "(25) It shall have authority to take rough fish of the following species: carp, suckers, catfish, buffalo, bullheads, goldeye, drum and squaw fish from the waters of Fort Peck Reservoir, by means of day labor, contract or permit, through the use of seines, or nets under such rules, regulations, contracts or permit as the commission shall prescribe. All rough fish so removed by the commission, by permit or contract, shall be disposed of in such form and in such manner, by sale or otherwise, as the commission, by its regulations, contracts or permits shall prescribe."

**26-105. (3654) Compensation of commissioners.** The members of the commission shall receive no compensation for their services as members thereof, except a per diem of fifteen dollars (\$15.00) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission other than the chairman receive as said per diem a sum in excess of eight hundred dollars (\$800.00) in any one (1) year, provided that the chairman of the commission shall not receive a sum in excess of one thousand dollars (\$1,000.00) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission, which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

**History:** En. Sec. 5, Ch. 193, L. 1921; re-en. Sec. 3654, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1949; amd. Sec. 1, Ch. 6, L. 1951; amd. Sec. 1, Ch. 127, L. 1953; amd. Sec. 1, Ch. 57, L. 1957.

The 1959 amendment by Ch. 36 in subsec. (10) deleted the word "them" which appeared between the words "install" and "in"; inserted provision in subsec. (15) for hunting of "antelope and elk" with bow and arrow, and deleted subsec. (25) added by the 1957 amendment.

The 1959 amendment by Ch. 96 added subsec. (26) to this section.

#### Repealing Clauses

Section 2 of Ch. 151, Laws 1957 and Sec. 2 of Ch. 96, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Subd. 4

#### Construction and Application

Where an employee of the state fish and game commission was summarily dismissed by the commission without sufficient notice, he was entitled to relief by way of mandamus, even though, subsequent to the discharge, he was given notice that a hearing on his dismissal would be held. *State v. State Fish & Game Comm.*, — M —, 323 P 2d 1116, 1118.

The power of discharge must be "for cause" and there is no distinction between officers and employees, and removal may be effected only after notice of the charges made has been given and the person involved has been given an opportunity to be heard in his defense. *State v. State Fish & Game Comm.*, — M —, 323 P 2d 1116, 1119.

#### Amendment

The 1957 amendment inserted the words "other than the chairman"; substituted "eight hundred dollars (\$800.00)" for "six hundred dollars (\$600.00)" and inserted the words "provided that the chairman of



the commission shall not receive a sum in excess of one thousand dollars (\$1,000.00) in any one (1) year."

#### Repealing Clause

Section 2 of Ch. 57, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 57, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 27, 1957.

**26-107. (3656) State fish and game wardens—appointment—qualifications.** The director, by and with the consent and approval of the commission, shall have the power to employ and appoint a deputy director, and a sufficient number of state fish and game wardens for the proper enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, and for such other purposes as the director may designate. State fish and game wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the commission. No person shall be appointed a state fish and game warden until a certificate shall have been issued to him by the commission to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office. State fish and game wardens employed and appointed by virtue of this act shall be persons who have an interest in protection, conservation and propagation of wildlife, game and fur-bearing animals, fish and game birds; they shall devote all of their time to their official duties.

**History:** En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957.

#### Amendment

The 1957 amendment inserted the words "fish and" before the words "game ward-

ens" each time they appear in this section and deleted the words "who shall have previously served as a state game warden," which appeared after the words "deputy director" in the first sentence.

#### Repealing Clause

Section 2 of Ch. 77, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### 26-110. (3659) Qualifications, powers and duties of game wardens.

#### Operation and Effect

This section has reference only to what the legislature denounced as unlawful possession under section 26-503, and for which the accused could be prosecuted for unlawful possession. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

Where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass, the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

**26-135. Wild animals damaging property—investigation—special season—destruction by commission—allowing holders of property to kill.** Upon the request or complaint of any landholder, or person in possession and having charge of any land in the state, that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the said property or crops thereon, the state fish and game department shall investigate and study the situation with respect to damage and depredation. The department may then decide to open a special season on



the said game, or if the special season method be not feasible, then the department may destroy the animals causing the damage. Provided, further, that the fish and game department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. Provided, further, no wild ferocious animal damaging property or endangering life shall be covered by this act.

**History:** En. Sec. 1, Ch. 60, L. 1957.

**Title of Act**

An act authorizing the destruction of game animals causing property damage and providing for the supervision, control

and disposition thereof by the state fish and game department; repealing all acts and parts of acts, in conflict herewith; and providing for an effective date of this act.

**26-136. Meat of wild animals so killed—disposition.** Provided, further, that the meat of all animals so killed or destroyed by the fish and game department or the authorized landholder shall be conserved and given to state institutions or to the school lunch programs, or welfare department. It shall be the duty of the fish and game department to provide transportation and distribution of the meat killed under the authorization of this act,

**History:** En. Sec. 2, Ch. 60, L. 1957.

**Effective Date**

**Repealing Clause**

Section 3 of Ch. 60, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Section 4 of Ch. 60, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

## CHAPTER 2—FISHING AND HUNTING LICENSES

Section 26-201. Definitions.

26-202.1. Licenses—fees—classification of licenses—fees and powers under licenses.

26-202.3. Defining resident.

26-222. Compensation—duties.

**26-201. (3681) Definitions.** For the purpose of this act, the following shall be construed, respectively to mean:

**Commission.** That [The] state fish and game commission.

**Person.** The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

**Open season.** The time during which game birds, fish, game and furbearing animals may be lawfully taken.

**Closed season.** The time during which game birds, fish, game and furbearing animals may not be lawfully taken.

**Angling or fishing.** The taking of, or attempting to take fish by hook and line or rod in hand.

**Upland game birds.** Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

**Migratory game birds.** Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping

cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes, or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed non-game birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, bear and bison or buffalo.

Furbearing animals. Marten or sable, otter, muskrat, fisher, mink, beaver, Canada lynx and black-footed ferret.

Predatory animals. Coyote, wolf, wolverine, mountain lion, weasel, skunk and civetcat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, and salmon); all species of the family thymallidae (grayling); all species of the family coregonidae (whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellow pike perch); all species of the genus esox (northern pike, pickerel, and Muskellunge); all species of the genus micropterus (bass).

**History:** En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R. C. M. 1921; amd. Sec. 3, ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959.

game birds"; deleted "fox" from the definition of "furbearing animals," adding "Canada lynx and black-footed ferret," and deleted "lynx" and "black-footed ferret" from the definition of "predatory animals."

#### Repealing Clause

Section 2 of Ch. 34, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1959 amendment added "chukar partridge" to the definition of "upland

**26-202.1. Licenses—fees—classification of licenses—fees and powers under licenses.** (1) Class A License. Resident Game Bird and Fishing License. Upon payment of a fee of three dollars (\$3.00) the applicant who qualifies therefor shall receive a Class A license which shall entitle the holder thereof to pursue, hunt, shoot and kill game birds and possess dead bodies of game birds, and to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 License. Resident Big Game License. Except as herein provided, any holder of a Class A license, who is twelve (12) years of age or older, may, upon payment of an additional sum of three dollars (\$3.00), be entitled to a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game animals and possess the carcass of game animals of the state which are authorized by the commission to be pursued, hunted, shot, killed, taken or possessed.

(a) On and after January 1, 1958, no big game hunting license shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license either: (1) evidence that he has held a hunting license issued by this state in a prior year, or (2) a certificate of competency as provided by this section; providing further that all resident persons under fifteen (15) years of age must present a certificate of competency even if he has held a hunting license in prior years.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may co-operate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person, found by it to be competent, to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed, a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. To Pursue, Hunt, Shoot, Kill, Take and Possess Deer, Antelope and Elk. Any holder of a Class A-1 license may, upon payment of an additional sum of two dollars (\$2.00) to any agent of the fish and game commission, authorized to issue fishing and hunting licenses, be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, and in special areas, as same may be designated by the fish and game commission.

(4) Class B License—Nonresident, or a Person Having Less Than Six (6) Months Residence in the State. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars (\$10.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(5) Class B-1 License—Nonresident and Persons Having Less Than Six (6) Months Residence in the State. Game Bird License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars (\$25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(6) Class B-2 License—Nonresident or Persons Having Less Than Six (6) Months Residence in the State. Big Game License. Any nonresident of the state of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of one hundred dollars (\$100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, kill game animals, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(7) Class B-3 License—Temporary Nonresident or Tourist License. Any nonresident of the state of Montana, upon payment of the sum of



three dollars (\$3.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

(8) Special Licenses. Any applicant who is the holder of a Class A-1 resident big game license or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which, in the judgment of the fish and game commission is to be issued and shall pay the following fees therefor:

Moose, twenty-five dollars (\$25.00).

Mountain Goat, five dollars (\$5.00).

Mountain Sheep, fifteen dollars (\$15.00).

Bison or Buffalo, twenty-five dollars (\$25.00).

(9) Class C License—Trapper's License. Any holder of a Class A license, upon making application and paying the sum of ten dollars (\$10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, except beaver, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(10) Class C-1 License—Land Owner's Trapper's License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar (\$1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof to trap any furbearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(11) Exception. Any person a resident of the state of Montana as defined in section 26-202.3 of the Revised Codes of Montana, 1947, subsection 2, chapter 267, Laws of Montana, 1955, who has attained the age of seventy (70) years shall be entitled to fish and hunt game birds without a Class A license, provided that said persons carry proof of age in lieu of the Class A license described in the foregoing subsection (1), and provided that for persons convicted of any violation of the fish and game laws or regulations of the state of Montana, the privilege conferred by this subsection shall be revoked for a period of not less than six (6) months.

**History:** En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959.

#### Compiler's Note

This section was amended twice in the 1957 Session. Once by Ch. 16 and once

by Ch. 100. Neither chapter contained an effective date. Chapter 16 was approved Feb. 16, 1957 while Ch. 100 was approved March 4, 1957. Neither amendment contained the changes made by the other chapter but each chapter amended the section in different particulars. As the amendments do not seem to conflict with



each other, the compiler has made a composite section including the changes made by each chapter. See Amendment note below.

#### Amendments

The 1957 amendment by Ch. 16, in subdivision (2) added the words at the beginning thereof "Except as herein provided" and also added the 2 paragraphs of subsection (a) of subdivision (2).

The 1957 amendment by Ch. 100, added subdivision (11).

The 1959 amendment added the words "antelope and elk" following the word "deer" wherever they appear in subd. (3) and the phrase "and in special areas" following the words "during a special season."

#### Repealing Clauses

Section 2 of Ch. 16, Laws 1957; Sec. 2 of Ch. 100, Laws 1957 and Sec. 3, of Ch. 36, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### Special Nonresident Antelope and Deer Licenses (Laws 1959, Ch. 27)

An act authorizing the state fish and game commission to issue special nonresident antelope and special nonresident deer licenses, fixing the fees, and powers and duties under such licenses, and providing that all acts and parts of acts in conflict herewith are hereby repealed, and containing an expiration date.

Section 1. The state fish and game commission may issue special nonresident antelope licenses and special nonresident deer licenses as provided for in subsection 15 of section 26-104, Revised Codes of Montana, 1947, as amended.

Such special licenses will be valid only for the area designated in the license, and shall expire annually on the thirtieth (30th) day of April. In areas where ten (10) or more written complaints from persons in the area involved, relating to the issuance of special nonresident deer and antelope permits, have been received by the fish and game department, a hearing at the county seat nearest to the area concerned must be held by representatives of the fish and game department where public protests will be heard. Such written complaints must be received within thirty (30) days after first announcement of seasons by the fish and game commission on or before the first day of August. Notice of such hearing will be published in local newspapers and radio stations in the area concerned at least ten (10) days prior to the date of the hearing. The fee for a special nonresident deer license shall be twenty dollars (\$20.00) and the fee for a special nonresident antelope license shall be twenty dollars (\$20.00). Not more than one (1) special nonresident deer license, and one (1) special nonresident antelope license shall be issued in any one (1) year to a nonresident. The tagging of game carcasses, as required by law, shall apply to all persons who purchased the special nonresident licenses herein provided. There shall be attached to each special nonresident antelope or deer license a permit which will authorize the holder thereof to ship or transport out of the state one (1) carcass of an animal for which such license was issued.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act shall remain in full force and effect until December 31, 1960.

#### 26-202.2. Special licenses—tagging of carcasses of game animals.

### DECISIONS UNDER FORMER LAW

#### Seizure and Confiscation of Untagged Carcass

In a case which arose while section 26-205 (subsequently repealed) was in effect it was held that where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass, the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff

for failure to attach the tax. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

Where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass as required by section 26-205 (since repealed), the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

**26-202.3. Defining resident.** That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1) That members of the armed forces of the United States, and their spouses, who are assigned to duty in Montana, and after a period

of thirty (30) days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this act. The thirty (30) day residence requirement is waived in time of war.

(2) Any citizen of the United States of America who has continuously resided within the state of Montana for a period of six (6) months immediately prior to making application for said license, and who is a legal resident of the state, shall be eligible to receive a resident hunting or fishing license.

(3) Any person in possession of first citizenship papers only shall not be considered a resident citizen of Montana, but such a person may purchase nonresident licenses.

**History:** En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959.

fish and wildlife service, United States park service and the bureau of land management."

#### **Amendment**

The 1959 amendment in subd. (1) added the words "and their spouses" and deleted the words "or regularly appointed officers and employees of the United States forest service, the United States

#### **Repealing Clause**

Section 2 of Ch. 106, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**26-222. Compensation—duties.** License agents, except salaried deputy fish and game wardens (state fish and game wardens), shall receive for all services rendered the sum of fifteen cents (15¢) for each license issued. On or before the 10th day of each month each license agent shall submit to the state fish and game warden (director) all duplicates of each class of licenses sold during the preceding month and shall accompany such duplicate licenses with lawful remittance of all moneys received for the sale thereof, less a fee of fifteen cents (15¢) for each license sold. Each license agent shall keep his license account open to inspection at all reasonable hours by the state fish and game commission, the state fish and game warden (director), or his deputies (wardens), or the state examiner.

**History:** En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959.

#### **Repealing Clause**

Section 2 of Ch. 31, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1959 amendment increased compensation of license agents from "10¢" for each license issued to "15¢."

#### **Effective Date**

Section 3 of Ch. 31, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 25, 1959.

### **CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME— OPEN AND CLOSED SEASONS**

Section 26-332. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.

#### **26-324. (3706) Penalty.**

##### **Operation and Effect**

Where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass, the deer was not unlawfully pos-

sessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

**26-332. (3714) Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.** Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fish traps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto; provided, however, that the Montana fish and game commission\* shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, traps, seines, or nets, and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of nongame fish and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead Lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

**History:** En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Sec. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; amd. Sec. 1, Ch. 44, L. 1959.

#### **Amendment**

The 1959 amendment added the phrase "and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water" following the words "or nets," in the proviso; added the words "designated species of" preced-

ing the words "nongame fish," and deleted the phrase "and Dolly Varden trout."

#### **Repealing Clause**

Section 2 of Ch. 44, L. 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 44, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 26, 1959.

## **CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION**

**Section 26-401. Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation.**

**26-401. (3722) Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation.** No person shall take, trap, shoot, kill, capture or attempt to take, trap, shoot, kill or capture, or in any way destroy any beaver in the state of Montana, or possess, buy, sell, ship or transport within or without the state, or cause the same to be done, any beaver or any part thereof including skins or hides and castors whether taken within or coming from without the state, except as hereinafter permitted.



Whenever beaver have increased in number to such an extent that in the judgment of the state fish and game commission the number of such beaver should be reduced, the commission shall have the authority to declare an open season on beaver under such rules and regulations as it shall prescribe; provided, however, that nothing herein contained shall authorize trapping on privately owned or leased lands, except with the approval of the landowner or lessee, or as hereinafter provided.

The state fish and game director may issue a permit to any bona fide owner or lessee of real estate which is being actually and materially damaged by beaver, to trap beaver on his own or leased premises only, and provided that the director shall, when issuing the permit mentioned, designate therein the maximum number of beaver that may be trapped under such permit. The fee for such permit shall be five dollars (\$5.00). All applications for beaver permits shall be filed with the state fish and game director, between the dates of May first and September thirtieth of each year. The term "premises" shall be construed to include any irrigation ditch or right of way appurtenant to the land for which said license or permit is issued.

That the state fish and game director shall in person or, by warden, examine the premises and investigate the alleged damage by beaver before issuing a license or permit.

Any person trapping beaver under a license or permit of the state fish and game director shall properly care for all skins of beaver taken thereunder and as soon as cured shall send to the state fish and game warden residing in this county, or in event of such warden being absent or unable to act, then to the nearest warden from the place of the trapper's residence, and send to such officer an affidavit giving his name, residence, license or permit number, the date and place of capture, with the number so captured, together with fifty cents (50¢) for each skin, and if such officer is satisfied of the legal taking of the same, he shall thereupon immediately forward such affidavit with the money, and a report, to the state fish and game director, and upon the receipt thereof the state fish and game director shall forward to such warden numbered metal tags sufficient in number for one to be attached to each skin covered by the affidavit; upon receipt of such tags the warden shall so attach them to the skins.

Any person who shall receive or bring into from without the state any beaver skin or skins duly tagged with a distinctive numbered metal tag of another state, shall report their arrival within ten (10) days to the state fish and game director and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated on the tags, and the name of the state so tagging the same, and the same shall be accompanied by a fee of fifty cents (50¢), and it shall not be necessary for such skins to be re-tagged with a Montana tag, nor any other fees paid therefor.

The state fish and game director shall keep a record of all skins so reported.



Each metal tag shall remain attached to the beaver skin to which it was originally affixed until it is dressed and manufactured into an article of commerce, or it shall accompany any skin shipped or transported out of the state. It shall be a misdemeanor, punishable as hereinafter provided, to remove a tag from such skins, to duplicate or reproduce such tags for fraudulent purposes or use contrary to the provisions of this act, or to misuse any tag detached from the skin to which it was originally attached.

Beaver skins taken within the state under permit, and those coming from without the state, tagged as herein provided may be possessed, bought, sold or transported at any time within the state of Montana, but no beaver skin or skins may be exported in any manner from the state without the shipper first obtaining an export or shipping permit from the state fish and game director, which may be issued upon application showing the kind and number of the metal tags on said skins and the payment of a fee of sixty cents (60¢) for the permit for each shipment.

Any package offered for transportation from the state which contains a beaver skin or skins shall be clearly marked on the outside thereof with the names and addresses of the consignor and consignee, the number and kind of skins contained therein, and the number of the shipping permit.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished as provided by section 26-324. Any beaver skin or skins taken or found in this state or which have been shipped out of this state except as specifically permitted by this section are being hereby declared contraband and shall be seized by the state fish and game director, warden or other officer authorized to enforce the provisions of this act. All skins so seized shall be marked or tagged for identification and sold by the state fish and game director at public auction in the state of Montana, after advertising at least fifteen (15) days prior to the date of sale, and the proceeds therefrom turned into the state treasury to be credited to the fish and game fund.

Beaver trapping permits issued under the provisions of this act shall expire June first of each year and all beaver skins taken thereunder and not reported and tagged according to the provisions of this section prior to July first following, shall be subject to seizure and sale as herein provided.

**History:** En. Sec. 38, Ch. 173, L. 1917; amd. Sec. 1, Ch. 197, L. 1919; re-en. Sec. 3722, R. C. M. 1921; amd. Sec. 17, Ch. 77, L. 1923; amd. Sec. 19, Ch. 59, L. 1927; amd. Sec. 1, Ch. 167, L. 1935; amd. Sec. 15, Ch. 224, L. 1947; amd. Sec. 1, Ch. 153, L. 1953; amd. Sec. 1, Ch. 24, L. 1957.

#### **Amendment**

The 1957 amendment in the third paragraph decreased the permit fee from \$10 to \$5; deleted the words "for ten (10) or less number of beaver and one dollar (\$1.00) per beaver for any number in excess of ten (10)" which appeared immediately after "five dollars (\$5.00)"; de-

leted from the end of the fifth paragraph the words "and shall receive from the owner ten cents (10c) for each skin so tagged by him, the same to be for his services"; deleted a former 6th paragraph which read "A record of tags so issued shall be kept in the office of the state fish and game warden" and in the last paragraph substituted "June" for "May" and "July" for "June."

#### **Repealing Clause**

Section 2 of Ch. 24, Laws 1957 repealed all acts and parts of acts in conflict therewith.

# CHAPTER 5—PROTECTION OF CERTAIN WILD BIRDS—SALE OF CONFISCATED BIRDS AND ANIMALS

- Section 26-510. Wild turkey tags—fee.  
 26-511. Tagging of turkey.  
 26-512. Penalty for violation.

## 26-503. (3725) Possession of unlawfully killed animals, etc.

### Operation and Effect

Section 26-110 has reference only to what the legislature denounced as unlawful possession under this section, and for

which the accused could be prosecuted for unlawful possession. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

## 26-506. (3726) Sale of confiscated birds and animals.

### References

Cited or applied in *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 303 (dissenting opinion).

## 26-508. (3728) Disposition of proceeds of sale.

### Liability of Game Warden for Seizure of Carcass

This section has reference only to a case wherein the officer has a right to seize the property, and it offered no defense to

a game warden who confiscated the carcass of a deer which was properly killed in open territory by one with a license. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

**26-510. Wild turkey tags—fee.** The state fish and game commission may issue wild turkey tags to the holder of a valid Class A, Class B-1, or Class B-2 license. Each tag shall authorize the holder to hunt, shoot, capture or possess one (1) wild turkey during such times and such places as the commission shall authorize an open season on wild turkey.

The fee for a wild turkey tag shall be two dollars (\$2.00). Turkey tags shall be issued either by a drawing system, or in unlimited number according to such rules and regulations as the commission shall prescribe.

**History:** En. Sec. 1, Ch. 35, L. 1959.

Class B-1, Class B-2 licenses; providing for a two dollar (\$2.00) fee; providing for the tagging of said turkeys; providing for penalties; and repealing all acts and parts of acts in conflict herewith.

### Title of Act

An act providing that the state fish and game commission may issue wild turkey tags to holders of valid Class A,

**26-511. Tagging of turkey.** Every person who shall take or kill any turkey shall immediately thereafter attach to the leg of said turkey the proper tag which has been validated by the holder thereof by complying with instructions on said tag.

**History:** En. Sec. 2, Ch. 35, L. 1959.

**26-512. Penalty for violation.** Any person who shall kill, capture or possess any wild turkey by authority of any turkey tag or permit and shall fail or neglect to attach his tag to the turkey, or shall fail to validate his tag by filling out or punch marking the tag as required and to keep the tag attached while the same is possessed by him, shall be guilty of a misdemeanor and upon conviction shall be punished as provided for in section 26-324 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 3, Ch. 35, L. 1959.

#### Repealing Clause

Section 4 of Ch. 35, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 7—SHIPMENT OF ANIMALS FROM STATE

Section 26-703. Permit to nonresident to remove fish, animals or parts of animals from state.

**26-703. (3732) Permit to nonresident to remove fish, animals or parts of animals from state.** There shall be attached to all nonresident fishing licenses, a permit authorizing the holder thereof to ship, remove or cause to be removed from the state a legal limit of fish legally taken or killed; provided such shipping permit shall not be valid if detached from such license prior to its use to authorize shipment of fish. Permits for the shipment of additional fish may be purchased from authorized license dealers provided that issuance of additional shipment permits shall not be construed as allowing the taking or killing of more than a legal limit of fish in any one day.

Any nonresident person who desires to ship, remove or cause to be removed from the state, any fish, game animals, game birds, furbearing animals, or any part thereof lawfully taken or killed, shall possess or obtain a shipping permit, and shall present the same to the transportation company, together with his license and the consignment of game to be shipped. Provided, any person who removes from the state any game animals, game birds, fish, furbearing animals, or any part thereof by means of a truck, automobile or airplane, shall have in his possession a shipping permit. Provided, further, that any nonresident, who has lawfully taken any game animals, game birds, fish, furbearing animals, or any part thereof, in an adjoining state, and is compelled, by reason of mountainous country or other local conditions, to carry and transport said game animals, game birds, fish, furbearing animals, or any part thereof, over and across this state in order to return with said game animals, game birds, fish, furbearing animals, or any part thereof, to said adjoining state in which said game was taken, may do so provided he has the necessary license for the taking thereof issued by the state in which the game animals, game birds, fish or furbearing animals were taken.

History: En. Sec. 53, Ch. 173, L. 1917; re-en. Sec. 3732, R. C. M. 1921; amd. Sec. 21, Ch. 77, L. 1923; amd. Sec. 24, Ch. 59, L. 1927; amd. Sec. 1, Ch. 226, L. 1943; amd. Sec. 1, Ch. 102, L. 1945; amd. Sec. 1, Ch. 182, L. 1947; amd. Sec. 1, Ch. 123, L. 1959.

#### Amendment

The 1959 amendment in the first sentence substituted "a legal limit" for "one legal limit"; added the last sentence of the first paragraph; deleted the former second paragraph, for text of which see parent volume; inserted the word "fish" the first time it appears in the second para-

graph; inserted the words "furbearing animals" each time it appears in the second paragraph; deleted a proviso in the present second paragraph which read "provided that no nonresident person may during any one year make more than one shipment, not to exceed the legal limit of fish and game," and deleted another proviso in that paragraph which read "Provided, further, that any nonresident who desires to ship or take out of the state, any furbearing animals, or the skins from furbearing animals, or parts thereof, legally acquired, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and



consignor, destination and number and kind of furbearing animals, or the skins from furbearing animals that are to be shipped, and said permit shall be presented to the transportation company with the consignment."

#### Repealing Clause

Section 2 of Ch. 123, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 9—OUTFITTER'S LICENSE—TAXIDERMIST'S LICENSE

Section 26-907. Taxidermist's license—fee—penalty for violations.

**26-907. (3751) Taxidermist's license — fee — penalty for violations.** Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any birds, or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state fish and game director a taxidermist's license and shall pay an annual license fee of fifteen dollars (\$15.00) therefor. Such person shall, keep a written record of all the articles of game, the kind and number of each, by whom owned, license number, and the residence of owner, also of all the articles of game shipped, and to whom and where shipped. The above record shall be kept for a least a period of one (1) year and open to inspection by any state game warden at any reasonable time. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324. In all cases of conviction of violation of this act the license of the person convicted shall be revoked.

**History:** En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R. C. M. 1921; amd. Sec. 24, Ch. 77, L. 1923; amd. Sec. 26, Ch. 224, L. 1947; amd. Sec. 1, Ch. 12, L. 1959.

#### Amendment

The 1959 amendment substituted the second and third sentences for one which read "Such person shall, on the first day of each month, make a written report to the state fish and game director, of all the articles of game, the kind and number of each, by whom owned, and the resi-

dence of owner, received during the past month, also of all the articles of game shipped, and to whom and where shipped, during the last month; also the amount and kind of each on hand on the last day of the month, and by whom owned and owners address."

#### Repealing Clause

Section 2 of Ch. 12, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

#### 26-1103. (3764) Repealed.

##### Repeal

This section (Sec. 1, Ch. 87, L. 1911; amd. Sec. 1, Ch. 124, L. 1915; re-en. Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 138,

L. 1919; amd. Sec. 1, Ch. 80, L. 1925; amd. Sec. 29, Ch. 224, L. 1947), relating to the Gallatin preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

#### 26-1104. (3765) Repealed.

##### Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 75, L. 1933), relating to

the Snowy Mountain preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.



**26-1106. (3767) Repealed.****Repeal**

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 3, L. 1949), relating to

the Powder river game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

**26-1110. (3769) Repealed.****Repeal**

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 30, Ch. 224, L. 1947) relating

to the Twin Buttes game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

**26-1112. (3771) Repealed.****Repeal**

This section (Sec. 1, Ch. 109, L. 1917; re-en. Sec. 83, Ch. 173, L. 1917), relating

to the South Moccasin mountain game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

**26-1114. (3773) Repealed.****Repeal**

This section (Sec. 1, Ch. 114, L. 1921; amd. Sec. 31, Ch. 224, L. 1947), relating to

the Blackleaf game and bird preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

## TITLE 27—FOOD AND DRUGS

- Chapter 3. State board of food distributors—regulation of food stores and food stuffs, 27-310.
4. Supervision of milk industry—state milk control board, 27-403 to 27-407, 27-409, 27-410, 27-414, 27-416, 27-426 to 27-429.

### CHAPTER 3—STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOOD STUFFS

Section 27-310. Food stores—permits, offenses for failure to obtain.

**27-310. Food stores—permits, offenses for failure to obtain.** The state board of food distributors shall require and provide for the annual registration and licensing of every food store now or hereafter doing business within the state. Upon the payment of a fee of five dollars (\$5.00), the board shall issue a license and provide the insignia designating such store a “certified food store” by the state board of food distributors, to such persons as may be qualified by law to conduct a food store provided such license shall be exposed in a conspicuous place in the food store for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct a food store unless such license has been issued to him by the board.

**History:** En. Sec. 10, Ch. 49, L. 1939;  
amd. Sec. 1, Ch. 93, L. 1957.

#### Repealing Clause

Section 2 of Ch. 93, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1957 amendment increased the license fee for a certified food store from \$2.00 to \$5.00.

### CHAPTER 4—SUPERVISION OF MILK INDUSTRY—STATE MILK CONTROL BOARD

- Section 27-403. Definitions.
- 27-404. Milk control board.
- 27-405. General powers of the milk control board.
- 27-406. Markets.
- 27-407. Orders fixing minimum prices.
- 27-409. Licenses—milk control fund.
- 27-410. Application for licenses.
- 27-414. Rules of fair trade practices.
- 27-416. Reports of dealers—accounting system—records.
- 27-426. Bonds required of distributors—amounts—forms and conditions.
- 27-427. Local advisory boards.
- 27-428. Judicial review of orders.
- 27-429. Service of process upon board.

**27-403. Definitions.** As used in this act, unless the context otherwise requires, “board” means the state agency created by this act, to be known as the Montana milk control board.

“Person” means any person, firm, corporation or association.

“Producer” means any person who produces milk for fluid consumption within the state, selling same at wholesale to a distributor.

"Distributor" means any person purchasing milk and distributing same for fluid consumption within the state. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for fluid consumption within the state.

"Dealer" means any producer, distributor, or producer-distributor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any area of the state designated by the board as a natural marketing area.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use.

"Milk" means fluid milk and cream sold for consumption as such, and for the purposes of this act shall be classified as follows:

Class I milk shall include all bottled or packaged milk, raw, pasteurized and homogenized, low fat, buttermilk and chocolate milk.

Class II milk shall include whipping cream, coffee cream, half-and-half, and skim milk.

The board shall have power and authority to assign fluid milk products hereafter developed to the class which in its discretion it determines to be proper.

**History:** En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959.

city, town, or community of the state or two or more of the same" and added all that part of the definition of milk relating to its classification.

#### **Amendment**

The 1959 amendment in the definition of market substituted "any area" for "any

**27-404. Milk control board.** There is hereby constituted a milk control board to consist of five (5) members, who shall be appointed by the governor, with the consent of the senate, for terms of office as herein provided, and with the following qualifications: No appointee shall be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products in any manner whatsoever; no appointee shall have held elective or appointive public office during the period of two years immediately preceding his appointment and no appointee shall hold any other public office, either elective or appointive, during his term of office as a member of the milk control board; and not more than three (3) members of the said milk control board shall, at the time of appointment or thereafter during their respective terms of office, be members of the same political party or residents of the same congressional district.

The members of said milk control board shall be appointed within thirty (30) days after passage and approval of this act. The term of office of one member shall expire on July 1, 1960; the term of office of one member shall expire on July 1, 1961; the term of office of one member shall expire on July 1, 1962; the term of office of one member shall expire on July 1, 1963; the term of office of one member shall expire on

July 1, 1964; and each succeeding member shall hold his office for a term of five years and until his successor shall have been appointed and qualified. Any vacancy shall be filled by appointment by the governor, with the consent of the senate as hereinbefore provided, for the unexpired term.

Consumer members of the existing milk control board at the time of the passage of this act may be reappointed by the governor at his discretion for any of the terms above mentioned and persons whom he shall appoint for those initial terms expiring in 1960, 1961, and 1962 shall be eligible for reappointment to full five year terms on the board; provided, however, that after 1962 no member other than one who is appointed to fill a vacancy shall be appointed to succeed himself on said board.

Three (3) members of the board shall constitute a quorum for the regular transaction of business.

The board shall choose one (1) of its own members as the chairman, who shall hold office as chairman for one year; provided, election as chairman shall not interfere with that member's right to vote on all matters before the board.

Each member of the board shall receive twenty-five dollars (\$25.00) per diem for each day actually spent in the performance of his official duties, plus his actual necessary traveling and other expenses in going to, attending and returning from meetings of the board and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the board, but in no event shall a member's per diem payments exceed fifteen hundred dollars (\$1500.00) in any one year.

Each member of the board shall give bond conditioned for the faithful performance of his duties in the sum of five thousand dollars (\$5000.00).

The board may employ necessary assistants and appoint agents and instrumentalities but all expenditure under this act shall be paid from the receipts hereunder.

The board shall have the power and it shall be its duty to designate an executive secretary who shall serve under the direction and at the pleasure of the board and who shall have charge of the administration of the board's orders, rules, and regulations, and who shall also serve as financial officer of the board and who shall be authorized to accept or receive money paid or to be paid to the board, either as license fees or fines as provided by this act. Such person shall, before he enters upon the discharge of his duties, execute and file a bond, in such amount as may be fixed by the board, as may be provided by law for public officers.

Meetings of the board shall be had at least every sixty (60) days at the call of the chairman or a majority of the board. The salary of the secretary is to be fixed by the board and the state board of examiners. The board shall so enforce the act that there shall be no discrimination against any dealer or consumer.

History: En. Sec. 4, Ch. 204, L. 1939;  
amd. Sec. 1, Ch. 249, L. 1957; amd. Sec.  
2, Ch. 192, L. 1959.



**Amendments**

The 1957 amendment made numerous changes and additions in this section. For section prior to amendment see parent volume.

The 1959 amendment completely rewrote this section relating to the composition of the milk control board.

**Effective Date**

Section 2 of Ch. 249, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

**27-405. General powers of the milk control board.** (1) The board is hereby vested with the powers, and it shall be its duty to supervise, regulate and control the fluid milk industry of the state of Montana, including the production, transportation, processing, storage, distribution and sale of milk in the state of Montana for consumption within the state, providing however, that nothing contained in this act shall be construed to abrogate or affect the status, force or operation of any provision of public health laws or the law under which the Montana livestock sanitary board is constituted together with the Montana livestock sanitary board regulations or county board of health regulations, or municipal ordinances for the promotion or protection of the public health, but the board shall have the power to cooperate with the state board of health, the Montana livestock sanitary board or any county or city board of health or the state department of agriculture and industry in enforcing the provisions of this act.

(2) The board shall have the power to investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in the state of Montana and to conduct hearings upon any subject pertinent to the administration of this act. The board shall have the power to subpoena milk dealers, their records, books and accounts, and any other person from whom information may be desired or deemed necessary to carry out the purposes and intent of this act, and may issue commissions to take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the milk control board at its offices in the state capitol, provided at least ten (10) days notice is given to the proposed witness.

(3) It shall be the duty of any sheriff of any county of the state, when requested to do so by the board, to execute any summons, citations or notice which the board may cause to be issued, for which such sheriff shall be authorized to charge the same fee against the funds provided for the milk control board as he might lawfully charge for the same service of such a document if issued from any district court of the state of Montana. Any person, other than a dealer who is cited for violation of the provisions of this act, or cited to show cause why his license should not be revoked, shall receive for his attendance before the milk control board or its duly designated agent the same compensation as is provided for a witness subpoenaed to appear before the district court, which shall be charged against the funds provided for the operation of the milk control board.

(4) Any duly designated agent of the board may administer oath to witnesses, may call and give notice of price hearings when the board is not in session and may conduct hearings or investigations and any such

duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, and in addition to the manner provided above for the execution of subpoenas, summons and citations issued by the milk control board to witnesses or dealers, the board, through its designated agent shall have the power to serve said subpoenas, summons or citations upon any person by sending a copy of such subpoena, summons or citation, through the United States mail, postage prepaid, which said mail shall be registered with return receipt attached and such service shall be complete when said registered mail shall be delivered to said person and such receipt returned to the board or its designated agent, signed by the person sought to be summoned, subpoenaed, or cited. Obedience to a subpoena, summons or citation, issued by the board or any person authorized and designated by the board to issue said subpoena, summons or citation, may be enforced by application to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such person subpoenaed, summoned or cited resides and said court shall order compliance with said subpoena, summons or citation and upon the failure of the witness to attend, to testify, or to produce such books or papers or records as the board may have commanded, such witness may be punished for contempt of court as for failure to obey a subpoena issued by or to testify in a case pending before said court.

(5) The board may act as mediator or arbitrator to settle any controversy or issue pertaining to fluid milk among or between producers, distributors, producer-distributors and/or consumers.

The operation and effect of any provision of this act, conferring a general power upon the milk control board, shall not impair or limit any specific power or powers granted to the milk control board by this act.

**History:** En. Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959.

#### Amendment

The 1959 amendment in subd. (1) substituted "department of agriculture and industry" for "department of agriculture, labor and industries"; added all that part of subd. (2) beginning with the words "or who cannot otherwise appear"; inserted the words "may call and give notice of price hearings when the board is not in session" near the beginning of subd.

(4), and substituted the end of that subdivision relating to enforcement of compliance with a summons, citation, or subpoena, for the former provision, for text of which see the parent volume.

#### Transportation Costs

Milk control board could give producers the option to share in the cost of moving their milk to outside marketing areas. *Heimbichner v. Montana Milk Control Board*, — M —, 332 P 2d 922, 924.

**27-406. Markets.** Pursuant to the declaration of policy relating to milk set forth in section 27-401 of the Revised Codes of Montana of 1947, the milk control board is vested with the duty and authority to designate natural marketing areas which shall together embrace all the geographical area of the state and to prescribe and enforce minimum producer, wholesale, and retail prices in such areas in the manner set forth in this act; provided, that at all times there shall not be less than five (5) natural marketing areas in the state.

(a) Natural marketing areas shall be established forthwith throughout the state by the board; provided that before any proposed natural

marketing area is established the board, after notice of at least thirty (30) days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within said proposed natural marketing area, who are licensed by the Montana livestock sanitary board, and the consuming public may present evidence and testify; and in the event the hearing or hearings make it evident to a majority of the board that the establishment of such proposed natural marketing area is in the public interest, the board shall make findings and conclusions and proceed to establish such natural marketing area.

(b) The board shall have the power, from time to time and at its discretion, to adjust and alter the boundaries of natural marketing areas after they have been established, if after a hearing upon notice of at least thirty (30) days to all interested parties its finds and orders such adjustment to be in the public interest.

(c) All previously established marketing areas and all price schedules, rules and regulations issued and promulgated by any previously existing milk control board in this state at the time of passage of this act are in force and effect, are hereby declared to be and remain in force and effect until altered or rescinded in the manner provided by this act.

(d) The board shall at all times maintain current information on quantities of surplus Grade A milk available in the various marketing areas throughout the state, and such information shall be available to all interested parties on request.

**History:** En. Sec. 6, Ch. 204, L. 1939;  
amd. Sec. 4, Ch. 192, L. 1959.

**Amendment**

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

**27-407. Orders fixing minimum prices.** Prior to the fixing of prices in any market the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors and consumers may result.

The board shall, at least ten (10) days prior to the date set for any public hearing on minimum prices, cause notice to be given to the consuming public and the milk industry of the specific factors which shall be taken into consideration in determining costs of production and dis-



tribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

If the board at any time proposes to base all or any part of any official order fixing minimum prices upon facts within its own knowledge, as distinguished from evidence which may be presented to it at a public hearing by the consuming public or the milk industry, the board shall, at least ten (10) days prior to the date set for any public hearing on minimum prices, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

The board, after consideration of the evidence produced at such hearing, shall make written findings and conclusions and shall fix by official order:

(a) The minimum prices to be paid by the milk dealers to producers and others for milk. Each order fixing minimum prices shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis of either butterfat or hundred-weight. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(b) The minimum wholesale prices to be charged for milk in its various forms, classes, grades, and uses when sold by distributors or producer-distributors to retail stores, restaurants, boarding houses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(c) The minimum retail prices to be charged for milk in its various forms, classes, grades and uses when sold by distributors, producer-distributors, and retail stores to consumers.

A minimum producer, wholesale or retail price to be charged for milk shall not be fixed higher than is necessary to cover the costs of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment.



The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or amend any official order theretofore made by the board provided that before making, revising, or amending any order fixing prices to be charged or paid for milk in any of its forms, classes, grades or uses, the board shall hold a public hearing on such matter in the same manner provided herein for the original fixing of prices.

**History:** En. Sec. 7, Ch. 204, L. 1939, amd. Sec. 5, Ch. 192, L. 1959.

#### **Amendment**

The 1959 amendment made numerous changes and rewrote this section. For section prior to amendment see parent volume.

#### **Retail Price**

Where retail price charged for some of the milk is more than twice the price paid by the distributor to the producer there is a violation of the statute. *Heimbichner v. Montana Milk Control Board*, — M —, 332 P 2d 922, 923.

### **27-408. Licenses to producers, producer-distributors, and distributors.**

#### **Application of Section**

License fee exacted by this section and section 27-409 applies to milk which is ultimately sold by a distributor outside an established market area. *Heimbichner v. Montana Milk Control Board*, — M —, 332 P 2d 922, 924.

#### **Collection of License Fees**

Board may collect license fees based on the whole volume of milk sold by producer whether within a certain marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, — M —, 332 P 2d 922, 925.

**27-409. Licenses — milk control fund.** No producer, producer-distributor, or distributor shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the Montana livestock sanitary board and without being licensed under this act by the milk control board. The annual fee for such license from the milk control board shall be two dollars (\$2.00), shall be due and payable on or before the first day of July, commencing in the year 1959 and shall be deposited by said board to the credit of the general fund.

In addition to said annual license fee, the board shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee of not more than five cents (5¢) per hundred weight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee of not more than two and one-half cents (2½¢) per hundred weight on the total volume of all milk subject to this act sold by a producer.

(c) A fee of not more than two and one-half cents (2½¢) per hundred weight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth (15th) day of July, October, January and April of each year, commencing in July of 1959, and the amount of such assessment shall be computed by applying the fee designated by the board to the volume of milk sold in the calendar quarter immediately preceding.

Failure of any producer, producer-distributor, or distributor to pay said assessment when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be effected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

All assessments hereinbefore required to be paid shall be deposited by the milk control board in a special fund which is hereby created and is designated the state milk control fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of said state milk control fund.

The rates of assessment above provided are maximum rates, and the board may, if it finds the costs of administering and enforcing this act can be derived from lower rates, fix the rates at a less amount on or before the first day of April in any year.

**History:** En. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959.

#### **Amendment**

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

#### **Application of Section**

License fee exacted by this section and section 27-408 applies to milk which is ultimately sold by a distributor outside

an established market area. *Heimbichner v. Montana Milk Control Board*, — M —, 332 P 2d 922, 924.

#### **Collection of License Fees**

Board may collect fees based on the whole volume of milk sold by producer whether within a certain marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, — M —, 332 P 2d 922, 925.

**27-410. Application for licenses.** An applicant for license to operate as a producer, producer-distributor, or distributor shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business and such application shall be accompanied by the license fee required to be paid.

**History:** En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959.

#### **Amendment**

The 1959 amendment deleted the former third and fourth sentences of the first

paragraph and the entire second paragraph, for text of which see parent volume.

#### **27-412. Repealed.**

##### **Repeal**

This section (Sec. 12, Ch. 204, L. 1939), relating to the penalty for delinquency in

payment of license fee, was repealed by Sec. 14, Ch. 192, Laws 1959, effective March 9, 1959.

**27-414. Rules of fair trade practices.** In addition to the general and special powers heretofore set forth, the board shall have the power to make and formulate reasonable rules and regulations governing fair trade practices as they pertain to the transaction of business among li-

censees under this act and among licensees and the general public. Such reasonable rules and regulations governing fair trade practices shall contain, but shall not be limited to, provisions regarding the following methods of doing business which are hereby declared unfair, unlawful, and not in the public interest:

(a) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by any person, whether in the form of money or otherwise.

(b) The giving of any milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of any customer.

(c) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

(d) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of any milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board pursuant to this act.

(e) The payment of a less price than the applicable producer price established by the board pursuant to this act by a distributor to any producer for milk which is distributed to any person, including agencies of the federal, state or local government.

**History:** En. Sec. 14, Ch. 204, L. 1939;  
amd. Sec. 8, Ch. 192, L. 1959.

**Amendment**

The 1959 amendment substituted "and among licensees and the general public" for "within that market" and added everything thereafter in this section.

**27-416. Reports of dealers—accounting system—records.** The board shall have the power to require all persons holding licenses under it to file with the board such reports at such reasonable or regular time as the board may require, showing such person's production, sale, or distribution of milk, and any information deemed by the board necessary which pertains to the production, sale or distribution of such milk, either under oath or otherwise, as the board may direct, and failure or refusal to file such reports when directed to do so by the board or its duly designated agent shall constitute grounds for the revocation of such person's license and shall constitute a violation for which such person may be fined as hereinafter provided, one or both, at the discretion of the board.

The board shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

Every distributor and producer-distributor shall keep the following records:

(a) A record of all milk, cream or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which such milk or cream was put.

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold.



(c) A full and complete record of all milk, cream or dairy products sold, classified as to kind and grade, showing where sold, and the amount received therefor.

(d) A record of the wastage or loss of milk or dairy products.

(e) A record of the items of handling expense.

(f) A record of all refrigeration facilities rented or sold for storage purposes to any person, showing types and sizes of the same, the location of said facilities, and the original, or duplicate original, of all agreements covering rental charges therefor.

(g) A record of all conditional sales of equipment or other property, the location of said property, and the original, or duplicate original, of all conditional sales contracts pertaining thereto.

(h) A record of all moneys loaned to wholesale customers, the terms and conditions of said loans, and the original evidence of the indebtedness based on said loans.

(i) Such other records as the board may deem necessary for the proper enforcement of the act.

**History:** En. Sec. 16, Ch. 204, L. 1939;  
amd. Sec. 9, Ch. 192, L. 1959.

#### **Amendment**

The 1959 amendment added everything after the first paragraph in this section.

### **27-419. Repealed.**

#### **Repeal**

This section (Sec. 19, Ch. 204, L. 1939), relating to cooperative corporations, was

repealed by Sec. 14, Ch. 192, Laws 1959, effective March 9, 1959.

### **27-423. Constructions, exceptions and limitations.**

#### **Collection of License Fees**

Milk control board may collect license fees based on whole volume of milk sold by producer whether within a certain

marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, — M —, 332 P 2d 922, 925.

**27-426. Bonds required of distributors—amounts—forms and conditions.** Every distributor before purchasing any milk from a producer shall execute and deliver to the milk control board a surety bond in the minimum sum of one thousand dollars (\$1000.00), executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be upon a form approved by the board, and shall be conditioned upon the payment in the manner required by this act, of all amounts due to producers for milk purchased by such licensee or applicant during the license year. Said bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay any producer or producers for milk in the manner required by this act, the board shall proceed forthwith to ascertain the names and addresses of all producer-creditors of such distributor, together with the amounts due and owing to them and each of them by such distributor, and shall request all such producer-creditors to file a verified statement of their respective claims with the board. Thereupon the board shall bring an action on the bond on behalf of said producer-creditors. Upon any action being commenced upon said bond, the board may require the filing of a new bond; and immediately upon a recovery in any action upon such bond, such distributor shall file a new bond; and



upon failure to file same within ten (10) days in either case, such failure shall constitute grounds for the revocation or suspension of the license of such distributor. In the event that recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by the court, any such amount recovered shall be divided pro rata among said producer-creditors.

The minimum bond of one thousand dollars (\$1000.00) shall be required of distributors purchasing an average daily quantity of milk of less than one hundred gallons; distributors purchasing an average daily quantity of one hundred gallons and less than two hundred gallons during any calendar month during a license year shall post a bond in the amount of two thousand dollars (\$2000.00); distributors purchasing an average daily quantity of two hundred gallons and less than three hundred gallons during any calendar month during a license year shall post a bond in the amount of three thousand dollars (\$3000.00); distributors purchasing an average daily quantity of three hundred gallons or more during any calendar month during a license year shall post a bond in the sum of five thousand dollars (\$5000.00).

In the event that any distributor so increases his purchases of milk during the license year that said purchases exceed the amount for which said distributor is bonded, said distributor shall forthwith post such additional bond or bonds as may be required to comply with the provisions of this section.

Failure of any distributor who purchases milk from producers to execute and deliver the bond as herein provided and required shall constitute a violation of this act; failure of any such distributor to post such additional bond or bonds as may be required to comply with the provisions of this act shall likewise constitute a violation of this act.

**History:** En. Sec. 10, Ch. 192, L. 1959.

**27-427. Local advisory boards.** Whenever a public hearing is scheduled by the milk control board in any marketing area for the purpose of fixing prices, the board shall, at least ten (10) days prior to the date set for such hearing, appoint a local advisory board, the function of which shall be to assist and advise the milk control board in matters pertaining to the production and marketing of milk in said marketing area. The local advisory board shall consist of two producers and two distributors, who are respectively actively engaged in milk production and distribution in the area. Such local advisory board shall meet with the milk control board at the call of the milk control board before, during, or after such public hearing to fix prices; and a verbatim transcript of all matters and things discussed by the milk control board with such local advisory board at all such conferences or meetings shall be prepared and shall be considered a part of the record of the hearing. The members of such local advisory board shall serve without pay, but in case conferences or meetings with the milk control board are held outside of the marketing area in which they produce or distribute milk they shall be entitled to receive actual and necessary expenses incurred in attending such meetings or conferences. In no event shall there be more than three meetings or conferences between

the milk control board and such local advisory board; and in all events such local advisory board shall cease to exist when the milk control board promulgates its decision or order fixing prices following the public hearing heretofore mentioned.

**History:** En. Sec. 11, Ch. 192, L. 1959.

**27-428. Judicial review of orders.** Any person or persons, jointly or severally, aggrieved by any decision or order of the milk control board may present to a court of record a petition, duly verified, setting forth that such decision or order is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within twenty (20) days after the filing and posting of the decision or order in the office of the board as required by section 27-413 of the Revised Codes of Montana of 1947.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board to review such decision or order of the board and shall prescribe therein the time within which a return thereto must be made to the court and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The writ shall command the board to certify fully to the court, at a specified time and place, a transcript of the record and proceedings, describing or referring to them with convenient certainty; that the same may be reviewed by the court, and may command the board to desist from further proceedings in the matter to be reviewed.

The board shall not be required to return the original papers acted upon by it, but it shall be sufficient for the board to return certified or sworn copies thereof, or of such portions thereof, as may be called for by such writ.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

When any such writ is granted, the cause shall have precedence upon the calendar of the court, and judgment and decree shall be entered therein as expeditiously as possible. The court shall affirm, modify, or reverse the decision or order of the board in accordance with law.

**History:** En. Sec. 12, Ch. 192, L. 1959.

**27-429. Service of process upon board.** When any petition or complaint is filed in any court naming the milk control board as a party, process may be served upon said board by delivering to, and leaving with, the executive secretary of said board, at his office, at the state capitol, a true copy of the summons, writ, or order, as the case may be, and a true copy of the complaint, petition, or application upon which such summons, writ, or order was based. In case of the absence of the executive secretary from his office, the assistants, clerks, auditors, accountants, or other personnel in his said office shall accept and receipt for such service.

**History:** En. Sec. 13, Ch. 192, L. 1959.

**Repealing Clauses**

Section 14 of Ch. 192, Laws 1959 read "Section 27-412 and section 27-419 of the Revised Codes of Montana of 1947, shall be, and the same are, hereby repealed."

Section 16 of Ch. 192, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Separability Clause**

Section 15 of Ch. 192, Laws 1959 read "If any section, subdivision, sentence or

word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such termination shall not affect the remaining portions of this act."

**Effective Date**

Section 17 of Ch. 192, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 9, 1959.









# REVISED CODES OF MONTANA

## VOLUME 3 1959 Cumulative Pocket Supplement

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 3 OF THE  
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3  
THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

*Edited by*

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

*Editorial Supervisor*

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana



COPYRIGHT 1959

*by*

THE ALLEN SMITH COMPANY



## NEW LAWS IN VOLUME 3

For index see pocket supplement to Replacement Volume 9

### ENACTED IN 1955

Casualty insurance covering state, insurer to waive defense of sovereign immunity, 40-1204.  
Controlled access highways, 32-2001 to 32-2010.  
Cost of maintaining voluntary applicants to state hospital, 38-410 to 38-412.  
Emergency war and veterans' housing facilities, 35-408 to 35-414.  
Highway patrol retirement system, 31-228 to 31-230.  
Highways not entirely within state as state highways, 32-1623, 32-1624.  
Motor vehicles as collectors' items, registration, 53-106.1.  
Reconstruction of bridges, 32-713 to 32-716.  
Special mobile equipment, fee, 53-639 to 53-643.  
Special permits for vehicles engaged in single movement on highways, 53-119.1, 53-119.2.  
Study of effect of weights on highways, 32-1622.  
Three-unit combination truck-trailer, fees in lieu of those provided in 53-615, 53-615.1.  
Uniform act regulating traffic on highways, 32-2101 to 32-21-160.

### ENACTED IN 1957

Amateur radio operator—special automobile license plates, 53-106.2 to 53-106.6.  
Blinker-red lights on firemen's cars, 32-21-141.1, 32-21-141.2.  
Highways, relocation of utility facilities, 32-1625.  
Housing Authorities Law, new provision, 35-103.1, 35-125.1, 35-125.2.  
Itemized statement of payroll deductions, 41-117  
Legislative council, 43-709 to 43-715.  
Oil and gas well liens, 45-1003 to 45-1012.  
Traffic on Highway Act, new provisions, 32-21-112.1, 32-21-112.2.

### ENACTED IN 1959

Commercial tow car requirements, 32-21-161, 32-21-162.  
Consumer Loan Act, 47-201 to 47-228.  
Forest debris disposal, 28-404 to 28-412.  
Labor union regulation, 41-1801 to 41-1805.  
Legislative proceedings, dissemination, 43-901 to 43-904.  
Livestock sanitary board diagnostic laboratory, 46-201, note.  
Lobbyists, regulation, 43-801 to 43-808.  
Marriage, declaration of, drafting and penalty for violations, 48-130.1, 48-130.2.  
Mines and mining, roofing and ribs in coal mines, 50-474, 50-475.  
Prohibition against commercial enterprises on rights-of-way of controlled access facilities, 32-2009.1.  
Radar—use by police, 32-2150.1 to 32-2150.3.  
Reciprocity requirements for foreign insurers, 40-1334 to 40-1336.  
Regulation of vehicles—policy of state, 32-2124.1, 32-2124.2.  
Tax levy for public ferries, 32-1518.  
Unlawful operation of vehicle by child under 18, 32-21-163 to 32-21-165.

### AMENDMENTS IN VOLUME 3

Animals running at large, 46-1717.  
Apprenticeship council, 41-1201, 41-1202.  
Bridges, 32-713, 32-714, 32-716.  
Butchers and meat peddlers, 46-504.  
Commissioner of labor and industry, 41-1603.  
County livestock protective committees, 46-2704.  
Crop lien, 45-1402.  
Emergency war and veterans' facilities, 35-414.

## AMENDMENTS IN VOLUME 3 (Continued)

- Estray livestock, 46-1005, 46-1008.
- Forest conservation, 28-119.
- Forests and forestry, 28-101, 28-103 to 28-105, 28-109 to 28-111.
- Grass conservation, 46-2303, 46-2305, 46-2320, 46-2326.
- Highway patrol, 31-104 to 31-106, 31-117, 31-125 to 31-127, 31-145, 31-146, 31-149, 31-155.
- Highway patrol retirement system, 31-201, 31-203, 31-206, 31-208 to 31-210, 31-212, 31-215 to 31-219, 31-223.
- Highways,
  - Commission, 32-1603, 32-1608, 32-1616.
  - Controlled access, 32-2002 to 32-2004.
  - Dumping debris, etc., 32-1014.
  - General highway law, 32-103.
  - Supervision, 32-302, 32-314.
- Home for senile men and women, 38-1106, 38-1108.
- Hours of labor, 41-1121.
- Housing Authorities Law, 35-103, 35-104, 35-109, 35-123, 35-125.
- Inebriates, 38-707, 38-708.
- Insane and feeble minded persons, 38-111, 38-208.2, 38-208.3, 38-209, 38-211, 38-214, 38-502 to 38-507.
- Inspection of livestock, 46-801, 46-802, 46-804, 46-806.
- Insurance companies, 40-1302.
- Insurance, rating bureaus, 40-2413.
- Labor on public works, 41-701.
- Legislature, per diem and mileage, 43-310, 43-311.
- Livestock, herd districts, 46-1501.
- Marks and brands, 46-609.
- Marriage, 48-130, 48-134.
- Mines and mining, 50-501.
- Motor vehicles,
  - Accident reports, 32-1201, 32-1202, 32-1206 to 32-1211, 32-1213.
  - Additional fees or taxes, 53-615, 53-615.1, 53-616, 53-618, 53-619, 53-623 to 53-625, 53-628.
  - Amateur radio operators, special license plate, 53-106.2 to 53-106.6.
  - Owner's responsibility, 53-419, 53-422, 53-423, 53-434.
  - Registration, 53-101, 53-106, 53-107, 53-108, 53-114, 53-116, 53-118, 53-120 to 53-122, 53-129.
  - Sales tax, 53-617.
- Oil and gas well liens, 45-1001 to 45-1003.
- Predatory animal control, 46-2102, 46-2104.
- Protection of forest and range resources, 28-603.
- Slashing and debris, 28-402.
- Speed and traffic regulations, 32-1123, 32-1127.
- State law library, 44-409.
- State training school and hospital, 38-801, 38-809, 38-812.
- Traffic Highway Act, 32-2105, 32-2114, 32-2128, 32-2130, 32-2131, 32-2133, 32-2134, 32-2139, 32-2142, 32-2143, 32-2145, 32-2148, 32-2157, 32-2168, 32-2172, 32-2175, 32-21-117, 32-21-122, 32-21-131 to 32-21-133, 32-21-143, 32-21-147, 32-21-151.
- Uniform Drug Act, 54-101, 54-103, 54-104, 54-106, 54-109, 54-119, 54-124, 54-125.
- Vocational rehabilitation, 41-801, 41-805, 41-806.

# MONTANA REVISED CODES

---

## TITLE 28—FORESTS AND FORESTRY

- Chapter 1. State board of forestry—forest conservation and fire protection, 28-101, 28-103 to 28-105, 28-109 to 28-111, 28-119.  
4. Disposal of slashings and forest debris, 28-402, 28-404 to 28-412.  
6. Protection and conservation of forest and farm resources by county commissioners, 28-603.

### CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

- Section 28-101. State board of forestry created—membership.  
28-103. Definitions, as used in this chapter.  
28-104. Responsibility of actual owner of land or timber—scope of act.  
28-105. Powers of board.  
28-109. Duty of owner of classified forest land.  
28-110. What constitutes compliance.  
28-111. Determination of cost of fire protection—certification—tax levy.  
28-119. Sawdust piles—restriction.

**28-101. State board of forestry created—membership.** For the purpose of protection and conservation of forest resources, forest range and water, of regulation of stream flow, and of prevention of soil erosion, and for the further purpose of more adequately promoting and facilitating the cooperation, financial and otherwise, between the state of Montana and all of the public and private agencies with which it is now or later may be associated in such work, there is hereby created the Montana state board of forestry, hereinafter designated as the board. The board shall consist of the governor of the state of Montana, who shall be ex officio chairman of the board, and seven additional members who shall be appointed by the governor as follows:

(1) One member of the state water conservation board of Montana, upon the recommendation of this board.

(2) One elector of the state of Montana upon the joint recommendation of the Blackfoot forest protective association and the northern Montana forestry association or their successors.

(3) One elector of the state of Montana upon the joint recommendation of the Montana stock growers' association and the Montana wool growers' association or their successors.

(4) One elector of the state of Montana who shall be a representative farm woodland owner, owning not less than forty (40) acres and not more than four hundred (400) acres of forest land classified as such by the board. This member shall be appointed by the governor from individual recommendations to be submitted by the three farmers' organizations—the Montana state grange, the Montana farm bureau federation and the Montana farmers' union or their successors.



(5) One elector of the state of Montana upon the recommendation of the Montana lumber manufacturers' association or its successors.

(6) One elector of the state of Montana who shall be a member of the faculty of the Montana school of forestry upon the recommendation of the president of the Montana state university.

(7) One elector of the state of Montana on the recommendation of the regional forester, region one, U. S. forest service.

The members appointed shall serve for a term of four (4) years, or during their continuance in office, as the case may be. In the event of death, resignation or disqualification of any member of the board, his successor shall be appointed in the same manner that he was appointed, and shall serve for the remainder of his term. The board shall hold two (2) regular meetings each year at the times and places designated by it. The dates of such regular meetings shall be shown in the permanent minute book of the board and notice of the date, time and place of each meeting shall be given in the manner prescribed by the board. The governor as ex officio chairman shall designate a member of the board to serve as acting-chairman of the board for such meetings as he personally is unable to attend. The state forester of Montana shall serve as secretary of the said board, and the board may contribute to his salary as indicated by section 81-1403. No compensation shall be paid to any member of the said board by the state of Montana for any services rendered or work done, except that members of the board attending authorized regular or special meetings for transacting official business will be allowed actual expenses in attendance at such meetings. Special meetings may be called in the manner prescribed by the board.

**History:** En. Sec. 1, Ch. 128, L. 1939; amd. Sec. 1, Ch. 141, L. 1941; amd. Sec. 1, Ch. 169, L. 1959.

"without compensation for such services or for any work done for the board, other than his regular compensation as state forester of Montana."

#### **Amendment**

The 1959 amendment, in the sixth sentence of the final paragraph, substituted "and the board may contribute to his salary as indicated by section 81-1403" for

#### **Repealing Clause**

Section 2 of Ch. 169, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**28-103. Definitions, as used in this chapter.** Forest land, for fire protection purposes, is defined as any land which has enough timber, standing or down; slash or brush, to constitute in the judgment of the board a fire menace to life or property, provided, that grassland and agricultural areas are included when such areas are intermingled with or contiguous to areas of forest land.

Forest fire is defined as a fire burning uncontrolled on forest lands.

Organized forest fire protection district is defined as a definite forest land area, the boundaries of which are fixed, and wherein, forest fire protection is provided through the medium of an agency recognized by the board.

Recognized agency is defined as an agency representing owners of forest lands in an organized forest fire protection district, organized for the purpose of providing forest fire protection in such district and recognized by the board as giving adequate fire protection to such forest lands in accordance with rules and regulations prescribed by the board.



Any public agency administering and protecting forest lands may also be recognized by the board as such an agency.

Forest fire season is defined as the period of each year beginning on May first and ending on September thirtieth, inclusive; provided, however, that in the event of excessive or great fire danger, this period may be expanded when in the judgment of the state forester dangerous fire conditions exist. When so expanded, the state forester shall give public notice.

Forest fire protection is defined as the work of prevention, detection and suppression of forest fires.

Protection zone is a broad area within which the forest fire protection costs are approximately the same. Protection zones will be designated by the state forester, with the approval of the board.

Owner is defined as the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right-of-way, or mineral reservation.

**History:** En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959.

#### Amendments

The 1955 amendment deleted from the beginning of this section an introductory statement which read "The following words and phrases used in this act are hereby defined:" and in the paragraph defining "Forest fire season" increased the period of time the board may expand for the fire season from 30 to 60 extra days.

The 1959 amendment added the definitions of forest land, forest fire and protection zone; deleted a definition of fire district which read "fire district is defined as a subdivision of an organized forest protection district, or a forest area outside the boundaries of an organized forest protection district, but adjacent thereto and which can be made a part thereof"; in the definition of organized forest fire protection district, the amendment inserted the words "forest fire protection is provided" and deleted from the end of that definition

the words "the forest landowners, whether state, county, municipal or private, pay the actual cost of fire protection and fire suppression on a pro-rata basis for acreage owned within the district"; in the definition of recognized agency the amendment substituted "agency representing" for "an association," inserted the words "fire" each time they appear after the word "forest" and deleted a phrase "and fire suppression in such district and financed by the owners in said district," which appeared after the words "forest fire protection in such district"; in the definition of forest fire season the amendment substituted that portion of the definition beginning with the words "this period may" for the words "the board may expand the said season within any district, or in any part thereof, for not more than sixty (60) extra days, and when so expanded the board shall give such public notice thereof as it may deem necessary" and in the definition of forest fire protection the amendment substituted "forest fires" for "fire in forest material or on forest land."

**28-104. Responsibility of actual owner of land or timber—scope of act.** (a) In any instance where the owner as herein defined does not appear upon the public records as the holder of the legal title to such land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this act. Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this act shall be upon the owner of the timber.

(b) Sections 28-101 to 28-129 shall apply to all forest lands within the state of Montana which shall be officially classified by the board as forest lands according to the definition of forest land in section 28-103 hereof.

**History:** En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959.

much of former subd. (b) besides making some changes in that subdivision. For section prior to amendment see parent volume.

#### **Amendment**

The 1959 amendment deleted a former second sentence of subd. (a) and deleted

**28-105. Powers of board.** To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create organized forest fire protection districts.

(c) To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in cooperation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To cooperate with the government of the United States and any of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder.

**History:** En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959.

#### **Amendment**

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

**28-109. Duty of owner of classified forest land.** Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost to the landowner of not more than ten cents (10¢) per acre per year for Class I land and not more than three cents (3¢) per acre per year for Class II land and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act. No other charges shall be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land. Shall include all forest land primarily suitable for production of timber, forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semi-

permanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land. Shall include all lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection a., above.

**History:** En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959.

#### Amendments

The 1955 amendment substituted "eight (8¢) cents" for "five cents (5¢)."

The 1959 amendment, in the third sentence, substituted "cost to the landowner of not more than ten cents (10¢) per acre per year for Class I land and not more than three cents (3¢) per acre per year for Class II land "for" cost of not less than one cent (1¢) or more than eight cents (8¢) per acre per annum"; added the third sentence to that section and all of the remainder of the section and deleted two provisos from the section which provided that any legal subdivision

of not more than 160 acres of forest land was deemed protected if more than  $\frac{1}{2}$  of it was within a radius of 1 mile of permanent habitation occupied during the fire season by the owner or someone under the owners direction, and providing further however, that if fire started, existed, or spread on such subdivision without immediate and reasonable measures for suppression it was to be prima facie evidence that protection was not being furnished and that upon such happening the board was to provide protection.

#### Effective Date

Section 2 of Ch. 188, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

**28-110. What constitutes compliance.** Every owner of Class I and Class II forest lands within an organized forest protection district, while a member of, or while participating in a recognized agency for forest protection shall be deemed to have fully complied with the requirements of section 28-109.

In establishing boundaries of organized forest fire protection districts covering forest lands described in section 28-109, a and b, the board may for the purpose of administrative convenience designate roads, pipelines, streams, or other recognizable landmarks as boundaries.

**History:** En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959.

#### Amendment

The 1959 amendment inserted the words "Class I and Class II" in the first paragraph and added the second paragraph.

**28-111. Determination of cost of fire protection — certification — tax levy.** The state forester will prepare a fire protection plan, for the approval of the board in which the fire protection costs for each classification within each protection zone is determined. The board will establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The state forester will request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the board will cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

On or before the second Tuesday in August of each year, the secretary shall determine the names of all owners who shall have failed to provide the forest fire protection for their lands required by this act.



together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county assessor of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest fire protection.

Upon receiving such certificate from the secretary showing the amount due, the county assessor shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in a special fund designated the foresters' cooperative work fund, as provided for in section 81-1410, Revised Codes of Montana, 1947.

**History:** En. Sec. 11, Ch. 128, L. 1939; paragraph and made numerous other  
amd. Sec. 1, Ch. 95, L. 1959. changes in this section. For section prior  
to amendment see parent volume.

**Amendment**

The 1959 amendment added the first

**28-119. Sawdust piles—restriction.** No sawmill located within or contiguous to forest lands shall accumulate in one pile, sawdust in excess of an amount resulting from the sawing of five hundred thousand (500,000) feet log scale of saw logs, provided, however, that a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the state forester. Each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with regulations issued by the board of forestry.

**History:** En. Sec. 19, Ch. 128, L. 1939; **Effective Date**  
amd. Sec. 1, Ch. 222, L. 1955. Section 2 of Ch. 222, Laws 1955 provided the act should be in effect from and  
after its passage and approval. Approved  
March 5, 1955.

**Amendment**

The 1955 amendment inserted the words  
"and burned" in the last sentence.

CHAPTER 4—DISPOSAL OF SLASHINGS AND FOREST DEBRIS

- Section 28-402. Disposal of slashings.  
28-404. Reduction or management of fire hazard created by cutting timber.  
28-405. Reduction of slash and forest debris along right-of-way.  
28-406. Purchaser will insure compliance, prior to purchase, will transmit withheld money to state forester—penalty.  
28-407. Disposal of slash—injunction against further cutting—disposal at expense of owner—lien and enforcement—orders.  
28-408. Supervision by state forester.  
28-409. Delegation of powers to state fire wardens.  
28-410. Contracts with owners of forest lands.



- 28-411. Methods of reducing hazards—contracts with forest protective agencies.  
28-412. Certificate of clearance.

**28-402. (2778.6) Disposal of slashings.** Every person, firm or corporation, hereinafter called the operator, who shall hereafter, for commercial purposes, cut any timber, logs, trees, posts, ties, poles, cordwood, pulpwood or any other forest product upon any lands within the state of Montana, shall remove any forest fire hazard to the property of others that may be created by the slashings, or other forest debris incident to such cutting operations. Provided, however, that an expenditure in excess of seventy-five cents (75c) for each one thousand (1,000) feet log scale, or the equivalent thereof if products other than logs are cut, shall not be required. Slash and debris will be disposed of during the cutting operations or as soon thereafter as is practical. Provided, however, that any fire hazard to the property of others created by said slash and debris shall under no conditions be allowed to remain for more than eighteen (18) months in any portion of the cutting area except with written permission of the state forester. If and when the operator has satisfactorily disposed of said slash or debris in accordance with the law and the rules and regulations of the state board of forestry he will be so notified, in writing, by the state forester.

Any operator, as defined herein, may elect to have said slash and debris, incident to his cutting operations treated, protected or disposed of by the state forester under the rules and regulations of the state board of forestry. Said operator will deposit with the state forester the estimated costs of such disposal at such times and in such amounts as the state forester may direct, but in no event shall such deposit or payment exceed, in the aggregate, an amount equal to seventy-five cents (75c), multiplied by the number of thousand of feet log scale cut from the forest area involved. The state forester will refund to said operator all sums deposited over and above costs of slash and debris treatment, protection or disposal.

Each person, firm or corporation, hereinafter called the purchaser, who shall hereafter purchase or contract to purchase any timbers, logs, ties, posts, poles or other forest products cut from any forest lands within the state of Montana, shall within five (5) days after making said purchase or contract to purchase, notify the state forester of such purchase or contract together with the name of the person furnishing said forest products and the name of the owner of the land from which said products are cut. Each purchaser shall withhold, before making payment for such products a sum equal to seventy-five cents (75c) for each thousand (1,000) feet log scale or the equivalent thereof if forest products other than logs are to be cut under such contract, unless the state forester has notified said purchaser that slash and debris from the cutting operator furnishing the forest products has been disposed of, or that the cutting operator has complied with the law. When the state forester is satisfied that said slash and debris, creating a fire hazard to the property of others, has been or will be legally treated, protected or disposed of by the cutting operator in accordance with the requirements of law and of the rules and regulations of the state board of forestry, he will release said money withheld

by purchaser to insure compliance with the law. If, on or before the conclusion of said purchase or contract to purchase, the state forester has not released said withheld moneys the purchaser shall, upon demand, immediately remit the moneys withheld to the state forester. The state forester will issue receipt, therefore, to the purchaser. Said receipt shall discharge the purchaser from any and all liability for moneys withheld from cutting operator in the amounts shown by said receipt. The state forester shall retain such moneys as a surety covering treatment, protection or removal of said slash and debris or may, at his discretion procure the treatment, protection or disposal of said slash and debris by applying said money, or so much thereof as may be necessary in payment of the costs of such abatement.

**History:** En. Sec. 6, Ch. 95, L. 1927; amd. Sec. 1, Ch. 81, L. 1931; amd. Sec. 1, Ch. 34, L. 1941; amd. Sec. 1, Ch. 83, L. 1949; amd. Sec. 1, Ch. 18, L. 1953; amd. Sec. 1, Ch. 230, L. 1955.

#### Amendment

The 1955 amendment substituted "timbers" for "timber" and deleted the word "trees" which appeared after the word "logs" near the beginning of the third paragraph.

**28-404. Reduction or management of fire hazard created by cutting timber.** Everyone engaged, or about to engage, in the cutting of any forest product or conducting standing improvement such as, but not limited to, thinning, weeding and pruning, upon private lands within the state of Montana shall provide for the reduction or management of the fire hazard to the property of others thus created or to be created by entering into a fire hazard reduction agreement as provided in sections 5 through 9 [28-408 to 28-412], inclusive of this act, or by posting a bond to the state of Montana in such form and for such amount as may be prescribed by the state forester; provided, however, that the amount of the bond so prescribed shall not be in excess of the amount which such person would be required to pay under said sections 5 through 9 [28-408 to 28-412], inclusive, and that the bond shall be conditioned upon full and faithful compliance with all requirements under said sections 5 through 9 [28-408 to 28-412], inclusive, and the faithful reduction or management of such fire hazards in the manner prescribed by law. Such bond shall be released upon completion of the work in compliance with the terms of the bond. The state forester shall issue a certificate of compliance with the terms of this section to all persons who have complied therewith.

**History:** En. Sec. 1, Ch. 207, L. 1959.

#### Title of Act

An act to reduce and manage fire haz-

ards created by cutting timber; providing for the reduction of slash and forest debris along right-of-way; and providing for a penalty for noncompliance of this act.

**28-405. Reduction of slash and forest debris along right-of-way.** Everyone clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dyke, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from such clearing or from the cutting of material for the construction of such public or private utility unless exempted by the state forester.

Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; provided that upon application to the state forester he may grant a permit extending the time within which such burning must be done in compliance with all the provisions of this chapter relating to burning permits during the closed season.

The provisions of the section shall apply to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts and road districts, whether the work be done by day labor, or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting said work for withholding until it is complete, a sufficient portion of the payment therefor to assure compliance with this act.

Violations of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1000.00).

In addition to the penalty herein provided the offender may be enjoined, at the instance of the state forester from proceeding with such work until the provisions of this section shall have been complied with; and, upon application of the state forester to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with the provisions thereof.

**History: En. Sec. 2, Ch. 207, L. 1959.**

**28-406. Purchaser will insure compliance, prior to purchase, will transmit withheld money to state forester—penalty.** The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state of Montana, shall before making such purchase or contract to purchase determine that the persons, firm or corporation engaged, or about to engage, in the cutting of these forest products, has provided for the reduction or management of the fire hazard thus created, as provided in sections 1 through 9 [28-404 to 28-412] inclusive. When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to insure faithful compliance with sections 1 through 9 [28-404 to 28-412] of this act, said purchaser will transmit any moneys which are withheld to the state forester.

Violation of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1000.00).

**History: En. Sec. 3, Ch. 207, L. 1959.**

**28-407. Disposal of slash—injunction against further cutting—disposal at expense of owner—lien and enforcement—orders.** In the event one responsible therefor shall fail, refuse or neglect to properly dispose of slash in accordance with the requirements of sections 1 and 3 [28-404 and 28-406], and such person responsible therefor is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products, and thereby creating a fire hazard anywhere within the state, he may be enjoined from cutting such timber and thereby creating a fire hazard until he shall have complied with the provisions of sections 1 and



3 [28-404 and 28-406]. Such injunction proceedings may be instituted by the state forester as plaintiff and the court may in its discretion grant a temporary injunction. In any such proceedings no bond shall be required of the plaintiff and such proceedings shall be handled with expedition in the district court of the county where the land is located.

If one responsible therefor has for any reason failed to comply with sections 1 and 3 [28-404 and 28-406], and has without such compliance cut any forest products and shall fail, refuse, or neglect to obtain compliance for a period of thirty days after being notified so to do by the state forester, the state forester, may, if he deems it advisable, complete, direct or authorize the disposal of such slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which such fire hazard remains undisposed of as aforesaid.

The cost and expense of such disposal, plus twenty per cent (20%) of the cost and expense of such disposal as a penalty, shall constitute a lien upon the forest products so cut or produced from such land. If payment of the sum demanded be not made to the state forester within ten (10) days of such written demand, the state forester must transfer all papers relative to the unsatisfied demand for payment to the attorney general of the state, who shall bring legal action on behalf of the state to recover the debt.

The state forester shall not file for record any lien against the property of any person who has been issued a certificate of compliance with sections 1 and 3 [28-404 and 28-406], covering such property.

All orders and directions issued by the state forester as required by this section and section 1 [28-404] shall be in writing and made in duplicate, the original of which shall be sent or delivered to the person to receive such orders, permits or directions; one copy shall be filed in the office of the state forester.

**History:** En. Sec. 4, Ch. 207, L. 1959.

**28-408. Supervision by state forester.** The state forester, under such rules as the state board of forestry may provide, shall supervise the reduction or management of any fire hazard to the property of others created by the cutting of any forest product on private land in the state of Montana.

The reduction or management of fire hazards referred to in this act may include or be limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

**History:** En. Sec. 5, Ch. 207, L. 1959.

**28-409. Delegation of powers to state fire wardens.** The state forester is hereby authorized and empowered to delegate any power granted to the state forester under sections 5 through 9 [28-408 to 28-412], inclusive, to any state forest fire warden.

**History:** En. Sec. 6, Ch. 207, L. 1959.

**28-410. Contracts with owners of forest lands.** The state forester is hereby authorized and empowered to enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state of Montana whereby slash is created, and under said



contract the state forester may assume all responsibility for the reduction or management of any fire hazard; any such contract shall provide the amount to be paid by the owner or operator to the state forester by reason of his agreement to assume the reduction or management, of such fire hazard. Said amount shall not exceed one dollar (\$1.00) for each one thousand (1000) feet log scale, or the equivalent thereof if forest products other than logs are cut.

**History:** En. Sec. 7, Ch. 207, L. 1959.

**28-411. Methods of reducing hazards—contracts with forest protective agencies.** The reduction or management of such fire hazards shall be carried on by the state forester and the state fire wardens in keeping with modern and progressive forest practices and more effective fire control and the state forester is hereby authorized to enter into contracts with forest protective agencies, including agencies of the United States of America, for the reduction or management of such fire hazards when in his opinion the work can best be accomplished in that manner. The state forester, state fire wardens, and recognized forest protective agencies, including any agency of the United States of America, with which the state forester has entered into an agreement for the reduction or management of any fire hazard as herein provided, and any officer or official of such agency, shall not be liable for any damage to the land, product, improvement, or other things of value of whatsoever nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of sections 5 through 9 [28-408 to 28-412], inclusive, when all requisite care and caution has been used and such work is being or has been performed in compliance with the rules provided in section 5 [28-408].

**History:** En. Sec. 8, Ch. 207, L. 1959.

**28-412. Certificate of clearance.** Any owner or operator who has entered into a contract with the state forester for the reduction or management of any fire hazard and upon payment of the contract price in accordance with the terms of said contract and the full compliance with the terms of said contract by such owner or operator, shall be granted a certificate of clearance and be relieved of any and all further liability and responsibility for the removal or reduction of any such fire hazard; provided, however, that in such event the operator shall deposit a cash bond, equivalent to the contract price, with the state forester conditioned upon the faithful performance of said contract.

**History:** En. Sec. 9, Ch. 207, L. 1959.

## CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

### Section 28-603. Powers of board.

**28-603. Powers of board.** (1) Boards of county commissioners may in their discretion establish fire seasons annually during which no person shall ignite or set any forest fire, or slash burning fire, or land clearing fire, or debris burning fire, or any open fire, within any forest, range or

crop lands, subject to the provisions of this act, without having obtained an official written permit to ignite or set such fire from a county rural fire chief or from a district rural fire chief authorized by the board to issue such permits for such lands;

(2) Any person who shall ignite or set any forest fire, or slash burning fire, or land clearing fire, or debris burning fire, or any open fire, within any forest, range or crop land subject to the provisions of this act without first having obtained a written permit to ignite or set such fire shall be guilty of a misdemeanor;

(3) To augment rural crews in case of serious emergency the boards may provide for the organization and training of voluntary urban fire crews to be used in rural areas;

(4) Any county rural fire chief and/or district rural fire chief may enter private property either with or without fire control crews for the purpose of suppressing fires, and are exempt from any damage resulting from such activity;

(5) The board is authorized to appropriate from the general fund of the county not to exceed five thousand dollars (\$5,000.00) per year for the purchase, care and maintenance of fire fighting equipment, or for the payment of wages to skilled operators of heavy mechanized equipment in the suppression of fires when deemed necessary; or if the general fund is budgeted to the full limit, the board may at any time fixed by law for levy and assessment of taxes levy a tax at such rate as in their judgment will be necessary to raise such needed sum not to exceed five thousand dollars (\$5,000.00).

**History:** En. Sec. 3, Ch. 173, L. 1945;  
amd. Sec. 1, Ch. 40, L. 1955.

**Amendment**

The 1955 amendment in subd. (5) raised the appropriation from \$2,500 to \$5,000.

**Repealing Clause**

Section 2 of Ch. 40, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 40, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

## TITLE 29—FRAUDULENT CONVEYANCES

### CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

#### 29-109. Rights of creditors whose claims have matured.

##### Parties to Actions

Although executor or administrator is not a necessary party to an action seeking to set aside an alleged fraudulent conveyance of decedent, he is a proper party

and the creditors have the right to resort to sections 91-3209, 91-3210 and cause the executor or administrator to commence and prosecute such an action. In re Estate of Adkins, 133 M 27, 319 P 2d 512, 515.

#### 29-112. Construction of act.

##### Application of Statute

The uniform fraudulent conveyance act (sections 29-101 to 29-113) does not repeal sections 91-3209, 91-3210, relating to

conveyances in the lifetime of a decedent whose estate is insolvent. In re Estate of Adkins, 133 M 27, 319 P 2d 512, 515.

## TITLE 31—HIGHWAY PATROL

- Chapter 1. Montana highway patrol—creation—powers and duties, 31-104 to 31-106, 31-117, 31-125 to 31-127, 31-145, 31-146, 31-149, 31-155.  
2. Highway patrolmen's retirement system, 31-201, 31-203, 31-206, 31-208 to 31-210, 31-212, 31-215 to 31-219, 31-223, 31-228 to 31-230.

### CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION—POWERS AND DUTIES

- Section 31-104. Supervisor—term—salary—supervisory power—resident requirement.  
31-105. Qualifications of patrolmen—salary—probationary training—discharge—demotion—suspension—hearing.  
31-106. Equipment of patrolmen.  
31-117. Drivers' examination section of highway patrol.  
31-125. Operators and chauffeurs must be licensed.  
31-126. What persons are exempt from license.  
31-127. What persons shall not be licensed.  
31-145. When court to forward license to board and report convictions.  
31-146. Mandatory revocation of license by board or supervisor upon proper authority.  
31-149. Period of suspension or revocation.  
31-155. Driving while license suspended or revoked.

**31-104. Supervisor—term—salary—supervisory power—resident requirement.** The board shall select a highway patrol supervisor who shall hold his office until his appointment has terminated for cause, as herein-after set forth, and shall receive a salary of seven thousand dollars (\$7,000.00) per annum, and necessary traveling expenses. The supervisor shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as supervisor shall have been a continuous resident of Montana for at least five (5) years. The supervisor, with the approval of the board and within the limits of any appropriation made available for such purposes, shall for such Montana highway patrol:

1. Designate the authority and responsibility in each such rank, grade and position;
2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;
3. Prescribe the official uniform of the Montana highway patrol;
4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;
5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;
6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any employee of the department;
7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential for the efficient operation of the Montana highway patrol.

**History:** En. Sec. 4, Ch. 199, L. 1943;      **Amendment**  
amd. Sec. 1, Ch. 102, L. 1957.

The 1957 amendment increased the salary of the supervisor from \$6,000 to



\$7,000 per annum and added all that portion of this section beginning with the sentence "The supervisor, with the approval of the board and within the limits of any appropriation made available for such purposes, shall for such Montana highway patrol:" which introduces new subdivisions 1 to 7.

#### Repealing Clause

Section 2 of Ch. 102, Laws 1957, repealed all acts and parts of acts in conflict therewith.

**31-105. Qualifications of patrolmen—salary—probationary training—discharge—demotion—suspension—hearing.** The board shall designate captains, not to exceed six (6) in number, sergeants, and patrolmen in such numbers as the board may deem necessary. Said patrolmen shall be chosen in equal numbers in the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts. Replacements and additions to the force shall be selected in the same manner. The salary of the captains, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners, provided that the base salary for captains shall be four hundred and twenty-five dollars (\$425.00) per month, the base salary for sergeants shall be four hundred dollars (\$400.00) per month, the base salary for patrolmen shall be three hundred and seventy-five dollars (\$375.00) per month, the base salary for probationary patrolmen shall be three hundred dollars (\$300.00) per month. In the event that said probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service. Captains and sergeants shall be selected from the patrolmen by the supervisor, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains and sergeants shall be outlined, defined and under the control of the supervisor, subject to the approval of the Montana highway patrol board. Provided, however, that when patrolmen work a forty-eight (48) hour week the base salaries shall be as follows: Captains, four hundred seventy-five dollars (\$475) per month: Sergeants, four hundred fifty dollars (\$450) per month: Patrolmen, four hundred twenty-five dollars (\$425) per month: Probationary patrolmen, three hundred fifty dollars (\$350) per month.

(a) Patrolmen shall possess the following qualifications:

1. Sound and active physical and mental condition.
2. Good moral character.
3. Resident of Montana for at least three (3) years last past.
4. Pass a satisfactory test in the operation of automobiles.
5. Not over fifty-five per cent (55%) of the patrol shall belong to one political party.
6. Citizens of the United States and state of Montana.

For the purpose of this act, the supervisor, captains, sergeants and patrolmen shall be deemed patrolmen. The Montana highway patrol board shall prepare a schedule of compensation and expenses for all patrolmen and submit it to the state board of examiners for their approval, in conformity with this act. All patrolmen shall be placed under probation-

ary training and service for a period of six (6) months to one (1) year, during which time the highway patrol supervisor must recommend to the highway patrol board for permanent appointments or the patrolmen will automatically be dismissed. All captains and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol supervisor must recommend to the highway patrol board for permanent appointments or the captains and sergeants will automatically revert to their previous ranks without prejudice. Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall, on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

Every person employed or appointed and designated as a supervisor, captain, sergeant, or patrolman under and pursuant to the provisions of this act, except as above provided, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one or more of the causes specified in the following paragraph.

(b) Cause for suspension, demotion, or discharge will be:

1. Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.
2. Gross neglect of duty or wilful violation or disobedience of orders or regulations.
3. Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.
4. Conduct unbecoming an officer.
5. Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.
6. Sleeping while on duty.
7. Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.
8. Gross inefficiency in performing duties.
9. Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.
10. Wilful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

The charge or charges against any such employee shall be made in writing and shall be signed and sworn to by the person making the same, which written charge or charges shall be filed with the supervisor of the Montana highway patrol. Any charges involving suspension or dismissal of the supervisor or a captain shall be filed directly with the highway patrol board.

Upon the filing of the same, if the supervisor, in his opinion, believes that such charges constitute grounds for discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing, otherwise he shall dismiss such charges.

(c) At least ten (10) days before the time appointed for said hearing, written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges shall be served on the said employee personally, if his whereabouts is known, in the state of Montana. If at the time, the whereabouts of the said employee is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the said written notice to him at his last known place of residence in Montana.

If the supervisor orders a hearing he may suspend such employee pending the rendition of the decision made in such case.

The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

The employee accused shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing. The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the supervisor and with the employee accused also.

If, after such hearing, the highway patrol board finds that any such charge or charges made against the employee are true, it may punish the offending party by reprimand, suspension without pay, demotion, or dismissal.

(d) Any employee who is so suspended, demoted, or dismissed may have a right of appeal to the district court of Lewis and Clark county, within ten (10) days after such decision or determination of the highway patrol board, and said court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court. If such decision or determination of the highway patrol board shall be finally reversed or modified by said court, the said employee shall be reinstated in his position and the highway patrol board shall pay to the said employee any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

The highway patrol board shall have the authority to order the supervisor to file charges with the board if the supervisor in his judgment does not believe the charge or charges warrant a hearing.

When the highway patrol supervisor has cause to believe that any member of the highway patrol has violated any of the hereinabove specified grounds for suspension, demotion or discharge, or his conduct has



warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member. Suspension shall be without pay and for a period not to exceed twenty (20) days in time. In cases of demotion, the member shall receive the pay of the classification to which he is demoted.

**History:** En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959.

#### Amendments

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

The 1957 amendment deleted the words "not to exceed nine (9) in number" which appeared after the word "sergeants" in the first sentence; deleted the provisions relating to the supervisor's salary; raised all the base salaries by \$25 per month; deleted the words "with three (3) years' service" in the provision providing for patrolmen's base salaries; deleted a proviso which read "provided however, that the maximum increase allowable by said

board shall not exceed five per cent (5%) of said base salaries;" changed the provision regarding the salary of probationary patrolman who is appointed permanently; added the sentence "These salaries shall be increased one per cent (1%) per year for each additional year of service" and added subd. 10 in subsec. (b).

The 1959 amendment in the first sentence substituted "six (6)" for "five (5)"; added the last sentence to the first paragraph, and in the list of qualifications, reduced the period of residency from 5 years to 3 years.

#### Repealing Clauses

Section 2 of Ch. 268, Laws 1955; Sec. 2 of Ch. 225, Laws 1957 and Sec. 2 of Ch. 109, Laws of 1959 repealed all acts or parts of acts in conflict therewith.

**31-106. Equipment of patrolmen.** The highway patrol board shall furnish patrolmen with automobiles equipped and fitted with a distinctive siren and a particularly designated light for use at night. The patrol board shall furnish all patrolmen with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts: provided that any such equipment and uniforms shall remain the property of the state of Montana: provided further, that the said board shall have authority to destroy, sell, or dispose of any and all obsolete equipment or uniforms or parts thereof, and any moneys received therefrom shall be paid into the state general fund.

**History:** En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955.

#### Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

### 31-107. Repealed.

#### Repeal

This section (Sec. 7, Ch. 199, L. 1943; amd. Sec. 1, Ch. 94, L. 1949), relating to speed limits was repealed by Sec. 158,

#### Repealing Clause

Section 2 of Ch. 31, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Ch. 263, Laws 1955, effective July 1, 1955. For new provisions, see secs. 32-2144 to 32-2150.

### 31-108, 31-109. Repealed.

#### Repeal

These sections (Secs. 8, 9, Ch. 199, L. 1943; amd. Sec. 1, Ch. 118, L. 1949), relating to criminal acts on highways and

penalties therefor, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.



**31-111. Repealed.**

**Repeal**

This section (Sec. 11, Ch. 199, L. 1943), relating to persons procuring driver's li-

censes, fee therefor and prohibiting certain persons from obtaining license, was repealed by Sec. 1, Ch. 102, Laws 1959.

**31-117. Drivers' examination section of highway patrol.** There is hereby created a drivers' examination section of the Montana highway patrol, under the direct control and supervision of the Montana highway patrol board. Said board shall maintain a permanent place of business at the state capitol and shall meet at least once each month for the purpose of transacting business either as the drivers' examining board, the highway patrol board, or jointly for the two. The board shall select a chief examiner, and as many assistant chief examiners, and examiners as it deems necessary and shall provide for the necessary clerical help.

The chief examiner, assistant chief examiners, and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall rank as a captain, the assistant chief examiners shall rank as sergeants, and the examiners shall rank as patrolmen.

**History:** En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957.

"an assistant chief examiner, and as many examiners" and in the second paragraph changed the rank of chief examiner from assistant supervisor to captain.

**Amendment**

The 1957 amendment in the last sentence of the first paragraph substituted the words "and as many assistant chief examiners, and examiners" for the words

**Repealing Clause**

Section 2 of Ch. 101, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**31-125. Operators and chauffeurs must be licensed.** (a) No person, except those hereinafter expressly exempted, under section 31-126, Revised Codes of Montana, 1947, as amended by section 1, chapter 95, Laws of 1955, shall drive any motor vehicle upon a highway in this state unless such person has a valid Montana license as an operator or chauffeur under the provisions of this act. No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur's license. No person shall receive a chauffeur's license unless and until he surrenders to the board any operator's license issued to him or an affidavit that he does not possess an operator's license.

(b) Any person holding a valid chauffeur's license hereunder need not procure an operator's license.

(c) Whenever a city or town requires an operator or chauffeur to obtain a local driving license or permit, such a license or permit shall not be issued unless applicant therefore presents a state driver's license valid under the provisions of this act.

(d) Provided further, that any person who is engaged in a gainful occupation or business enterprise and who has resided in this state for a period exceeding ninety (90) days is considered to be a resident for the purpose of being licensed to drive a motor vehicle and must thereafter be licensed to drive motor vehicles under the laws of this state.

**History:** En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; Sec. 1, Ch. 51, L. 1959.

**Amendments**

The 1957 amendment in subd. (a) added the words "under section 31-126, Revised

Codes of Montana, 1947, as amended by section 1, chapter 95, Laws of 1955," and inserted "Montana" before the word "licensee."

The 1959 amendment added subd. (d).

#### **Repealing Clauses**

Section 2 of Ch. 79, Laws 1957 and Sec.

2 of Ch. 51, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 79, Laws 1957 provided the act should be in effect from and after July 1, 1957.

**31-126. What persons are exempt from license.** The following persons are exempt from license hereunder:

1. Any person while operating a motor vehicle in the service of the Army, Navy, or Marine Corps of the United States;

2. Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway;

3. A nonresident who is at least fifteen (15) years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator;

4. A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to the age limits applicable to chauffeurs in this state except that any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this state;

5. Any nonresident who is at least eighteen (18) years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than ninety (90) days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident.

6. A driver's license issued hereunder to any person who enters the United States armed forces, if valid and in force and effect at the time such person enters the service, shall continue in full force and effect so long as such service shall continue unless such license is sooner suspended, revoked or cancelled for a cause as provided by law, and for not to exceed thirty (30) days following the date on which holder of such driver's license is honorably separated from such service. During said thirty (30) day period, such license shall be valid only when in the immediate possession of the licensee while driving and the licensee has his discharge, separation, leave or furlough papers in his immediate possession.

**History:** En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955.

#### **Amendment**

The 1955 amendment added subd. 6.

#### **Repealing Clause**

Section 2 of Ch. 95, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 95, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

**31-127. What persons shall not be licensed.** The board shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of fifteen (15) years, except that the board may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2. To any person, as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively for the transportation of property for compensation, who is under the age of eighteen (18) years, nor to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of twenty-one (21) years;

3. To any person, as an operator or chauffeur, whose license has been suspended during such suspension, nor to any person whose license has been revoked, except as provided in section 31-149;

4. To any person, as an operator or chauffeur, who is an habitual drunkard, or is addicted to the use of narcotic drugs;

5. To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

6. To any person, as an operator or chauffeur, who is required by this act to take an examination, unless such person shall have successfully passed such examination;

7. To any person who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

8. To any person as an operator or chauffeur, who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic: provided that the board may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a period of two (2) years and when recommended by the state health officer as being controlled medically or otherwise to the degree that the affliction will not interfere with the safe operation of a motor vehicle.

**History:** En. Sec. 11, Ch. 267, L. 1947;  
amd. Sec. 1, Ch. 60, L. 1955.

**Amendment**

The 1955 amendment added subd. 8.

**Repealing Clause**

Section 2 of Ch. 60, Laws 1955 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 60, Laws 1955 provided the act should be in effect from and after July 1, 1955.

**Cross-Reference**

Reports of persons subject to epileptic type seizures, sec. 69-127.

**31-145. When court to forward license to board and report convictions.**

(a) Whenever any person is convicted of any offense for which this act



makes mandatory the revocation of the operator's or chauffeur's license of such person by the board, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon forward said license to the board and at the same time forward a record of such conviction to the board, providing that if such person does not possess a driver's license the court shall so indicate in its report to the board.

(b) Every court having jurisdiction over offenses committed under this act, or any other act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward to the board a record of the conviction of any person in said court for a violation of any said laws other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted.

(c) For the purposes of this act the term "conviction" shall mean a final conviction. Also, for the purposes of this act a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be reported to the board by the court having jurisdiction.

(d) Any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license, such period of revocation shall commence from date of conviction or forfeiture of bail.

**History:** En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957.

licenses to the board and at the same time forward a record of such conviction to the board and to the registrar of motor vehicles" and added subd. (d).

#### **Amendment**

The 1957 amendment in subd. (a) inserted the period after the word "convicted" and substituted the sentence beginning "The court shall thereupon forward said license \* \* \*" for the words "and the court shall thereupon forward said

#### **Repealing Clause**

Section 2 of Ch. 165, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**31-146. Mandatory revocation of license by board or supervisor upon proper authority.** The board or supervisor upon proper authority shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

1. Manslaughter resulting from the operation of a motor vehicle;
2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug or a combination thereof;
3. Any felony in the commission of which a motor vehicle is used;
4. Failure to stop and render aid as required under the laws of this state in the event of a motor-vehicle accident resulting in the death or personal injury of another;
5. Perjury or the making of a false affidavit or statement under oath to the board under this act or under any other law relating to the ownership or operation of motor vehicles;
6. Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months.



**History:** En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957.

#### Amendment

The 1957 amendment in the first sentence inserted the words "or supervisor upon proper authority" and in subd. (2) substituted the words "or narcotic drug

or a combination thereof" for the words "a narcotic drug."

#### Repealing Clause

Section 2 of Ch. 192, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**31-149. Period of suspension or revocation.** (a) The board shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under section 31-155 and section 32-1202, Revised Codes of Montana, 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of one (1) year from the date of such revocation, such person may make application for a new license as provided by law, but the board shall not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways.

**History:** En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957.

"of such revocation" for the words "on which the revoked license was surrendered to and received by the board."

#### Amendment

The 1957 amendment added "and section 32-1202, Revised Codes of Montana, 1947" to subd. (a) and in subd. (b) in the exception clause substituted the words

#### Repealing Clause

Section 2 of Ch. 126, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**31-155. Driving while license suspended or revoked.** (a) Any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do is suspended or revoked shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than two (2) days or more than six (6) months and there may be imposed in addition thereto a fine of not more than five hundred dollars (\$500.00).

(b) The board upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended or revoked shall extend the period of such suspension or revocation for an additional like period.

**History:** En. Sec. 39, Ch. 267, L. 1947; amd. Sec. 1, Ch. 84, L. 1959.

issue a new license for an additional period of one (1) year from and after the date such person would otherwise have been entitled to apply for a new license."

#### Amendment

The 1959 amendment in subd. (b) added the provisions relating to revocation and deleted a clause from the end of that subdivision which read: "and if the conviction was upon a charge of driving while a license was revoked the board shall not

#### Repealing Clause

Section 2 of Ch. 84, Laws 1959 repealed all acts or parts of acts in conflict therewith.

## CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

Section 31-201. Definitions.

31-203. Montana highway patrolmen's retirement board.

31-206. Rules and regulations—actuarial data.

- 31-208. Service allowance.
- 31-209. Payments by contributors.
- 31-210. Contributions by the state of Montana.
- 31-212. Voluntary retirement.
- 31-215. Involuntary retirement allowance.
- 31-216. Compulsory retirement allowance.
- 31-217. Refunds in case of resignation or discharge.
- 31-218. Payments upon death.
- 31-219. Payments in case of death from natural causes.
- 31-223. Service in the armed forces of the United States.
- 31-228. Optional retirement allowance.
- 31-229. Separability of provisions.
- 31-230. Dormant savings accounts—transfer—subsequent re-entry to membership.

**31-201. Definitions.** The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

“Accumulated deductions,” the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

“Beneficiary,” shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

“Retired patrolman,” any person in receipt of a retirement allowance under this act.

“Board,” the Montana highway patrolmen’s retirement board.

“Compulsory retirement age,” sixty years of age.

“Contributor,” any person who has accumulated deductions in the fund, standing to his credit.

“Final salary,” the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

“Actuarial equivalent,” the accumulated contributions and the present value of the member’s state service based on length of service and member’s attained age used to provide a life or temporary life income to the legally designated person, based on such person’s attained age and sex at the time the option becomes available.

“Fund,” the Montana highway patrolmen’s retirement fund.

“Involuntary retirement,” a retirement not for cause and before retirement age.

“Member’s annuity,” payments for life derived from contributions made by the contributor.

“Optional retirement age,” the age at which a contributor may retire after twenty (20) years’ service or more.

“Retirement age,” the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

“Retirement allowance,” the state annuity plus the member’s annuity.

“State annuity,” payments for life derived from contributions made by the state of Montana.

**History:** En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955.

#### Amendment

The 1955 amendment substituted the present definition of "Beneficiary" for one which read "Beneficiary, any person in receipt of a retirement allowance under this act"; in the definition of "Final salary" substituted "for any three (3) years

of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years," for "for the five years of service immediately preceding retirement, or, in the event a member has not served five years" and added the definitions of "Retired patrolman," and "actuarial equivalent."

**31-203. Montana highway patrolmen's retirement board.** There is hereby established the Montana highway patrolmen's retirement board, which shall consist of five (5) members, who shall be the chairman of the Montana highway patrol board, the supervisor of the Montana highway patrol, and three (3) members of the Montana highway patrolmen's association. Immediately after the passage and approval of this act, the Montana highway patrolmen's association shall elect one (1) member whose term of office shall expire July 1, 1956, another member whose term of office shall expire on July 1, 1957, and another member whose term of office shall expire on July 1, 1958, and their successors shall be elected for a term of three (3) years, except that any person appointed to fill a vacancy shall be eligible for election. The secretary and attorney of the Montana highway patrol board shall be members ex-officio.

**History:** En. Sec. 3, Ch. 37, L. 1945; amd. Sec. 2, Ch. 243, L. 1955.

#### Amendment

The 1955 amendment deleted from the first sentence the words "the attorney for the Montana highway patrol" which appeared between the words "patrol" and

"and," substituted "three (3)" for "two (2)" and deleted from the end of said sentence the words "to be annually elected by the said association" added the second sentence and in the last sentence inserted the words "and attorney" and substituted the words "be members ex-officio" for the words "act as secretary of the board."

**31-206. Rules and regulations—actuarial data.** The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund, and shall adopt for the retirement system one or more mortality tables.

**History:** En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955.

#### Amendment

The 1955 amendment completely rewrote the first sentence. Before amend-

ment it read "The board shall, from time to time, establish such rules and regulations for the administration of this act as may be deemed necessary."

**31-208. Service allowance.** In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the patrol including service rendered prior to July 1, 1945, upon complying with the provisions of this act. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service



prior to July 1, 1945. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor. The time during which a contributor is absent from service without pay shall not be counted in computing the service of a contributor except service with the armed forces of the United States in time of war.

**History:** En. Sec. 8, Ch. 37, L. 1945; amd. Sec. 4, Ch. 243, L. 1955.

United States in time of war" for "unless approved by the board" in the last sentence.

#### **Amendment**

The 1955 amendment substituted "except service with the armed forces of the

**31-209. Payments by contributors.** Every member shall be required to contribute into the fund a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and credited to his account in the fund, provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the fund shall cease.

**History:** En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955.

#### **Amendment**

The 1955 amendment substituted "five per cent (5%)" for "three and one-half per cent (3½%)," substituted a comma for a period which appeared after the words "credited to his account in the fund" and deleted the words "Every member who was in the employ of the Montana highway patrol prior to July 1, 1945, shall have the option and he may elect to make back payments to the date when he first entered the service of the Montana highway patrol. Such back payments may be spread over a period of two (2) years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by twenty-four (24), which deduction increase shall be credited to such

back payments owing and shall be continued until the full amount of such back payments shall have been completed. Any such deduction increase may be anticipated in part or in full by the contributor at any time and must be anticipated in full at the time of retirement before a retirement allowance is granted, and if not so anticipated and paid in full then a member's annuity shall be calculated on the total accumulated deductions standing to his credit in the fund, and the state annuity shall be reduced in proportion to the reduction which occurs in the member's annuity due to the amount of back payments not so anticipated. Every contributor who shall elect to make such back payments shall receive full credit under this act for all contributions made into the fund and for all service credits to which he might thereby be entitled."

**31-210. Contributions by the state of Montana.** The state of Montana shall annually contribute to the fund fifteen per cent (15%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

**History:** En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955.

#### **Amendment**

The 1955 amendment substituted "fifteen per cent (15%)" for "ten per cent (10%)" and "under the laws of the state

of Montana" for "in section 31-111 for a period of ten (10) years from and after July 1, 1945. But not to exceed seven and one-half (7½¢) cents for each such license sold, in the event the present fee should be raised in the ensuing ten (10) years."

**31-212. Voluntary retirement.** If a contributor has served twenty (20) years of creditable service with the Montana highway patrol, he is hereby granted the option and privilege of retiring and in such case, his retirement allowance shall be proportionately reduced.



**History:** En. Sec. 12, Ch. 37, L. 1945; "on an actuarial basis" which appeared  
amd. Sec. 7, Ch. 243, L. 1955. at the end of this section.

**Amendment**

The 1955 amendment deleted the words

**31-215. Involuntary retirement allowance.** Should a contributor be discontinued from service, not voluntarily, after having completed ten (10) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows: (a) the full amount of accumulated deductions standing to his credit; or (b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

**History:** En. Sec. 15, Ch. 37, L. 1945; "the actuarial equivalent of" after the  
amd. Sec. 8, Ch. 243, L. 1955. word "plus" in subd. (b).

**Amendment**

The 1955 amendment inserted the words

**31-216. Compulsory retirement allowance.** Any member, regardless of his years of service, who has attained the age of sixty (60) years, shall forthwith be retired. If he shall have served twenty-five (25) years or more, he shall receive the full retirement allowance as provided herein. If he shall have served less than twenty-five (25) years, he shall be entitled to the same options as provided in section 31-215, as amended.

**History:** En. Sec. 16, Ch. 37, L. 1945;  
amd. Sec. 9, Ch. 243, L. 1955.

**Amendment**

The 1955 amendment added the words  
"as amended" at the end of this section.

**31-217. Refunds in case of resignation or discharge.** Where a contributor resigns of his own volition, or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

**History:** En. Sec. 17, Ch. 37, L. 1945;  
amd. Sec. 2, Ch. 109, L. 1947; amd. Sec.  
10, Ch. 243, L. 1955.

"seventy-five per cent (75%) of the accumulated" which appeared after the word  
"then" and inserted the word "the" before the word "deductions."

**Amendment**

The 1955 amendment deleted the words

**31-218. Payments upon death.** If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary.

Such retirement allowance shall consist of: (a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and (b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to fifty per cent (50%) of the final salary of the contributor, less the amount which is paid to any such beneficiary under the workmen's compensation act of the state of Montana, during the period such compensation is paid or payable.

**History:** En. Sec. 18, Ch. 37, L. 1945;  
amd. Sec. 11, Ch. 243, L. 1955.

**Amendment**

The 1955 amendment in the first paragraph substituted the word "beneficiary"

for the words "widow so long as she remains his widow and if and when such widow dies or remarries, then to his children under eighteen (18) years of age while they are under eighteen (18) years of age, and if and when there are no children under eighteen (18) years of age, then to the member's parent or parents if they are dependent"; in the second

paragraph inserted the words "the actuarial equivalent of" immediately after "(b)" and the words "which when added to the member's annuity will provide a total annuity" after the words "a state annuity" and substituted the word "beneficiary" for the words "widow or children or dependent parent or parents."

**31-219. Payments in case of death from natural causes.** (a) If the retired patrolman dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary. (b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 31-215, as amended.

**History:** En. Sec. 19, Ch. 37, L. 1945; amd. Sec. 12, Ch. 243, L. 1955.

#### **Amendment**

The 1955 amendment in subd. (a) substituted the words "retired patrolman" for "beneficiary" and substituted the word "beneficiary" both times it appears in this section for the words "legal representa-

tives or to such person having an insurable interest in his life as he shall nominate by written designation duly acknowledged and filed with the board"; in subd. (b) substituted the words "the actuarial equivalent of the options" for "either of the two options" and inserted the words "as amended" after "section 31-215."

**31-223. Service in the armed forces of the United States.** Any member of the Montana highway patrol now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the fund; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the fund the full amount of such payments upon his return to the Montana highway patrol, and such repayments must be made within two (2) years after his return to the patrol provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

**History:** En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955.

#### **Amendment**

The 1955 amendment deleted the words

"in the same manner as provided in section 31-209" which appeared between the words "patrol" and "provided."

**31-228. Optional retirement allowance.** Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insur-

able interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 2. Upon his death, one-half of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 3. Such other benefit or benefits shall be paid, either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

**History:** Section 31-228 added by Sec. 14, Ch. 243, L. 1955.

**31-229. Separability of provisions.** The provisions of this act are severable, and, if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions. It is hereby declared to [be] the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

**History:** Section 31-229 added by Sec. 14, Ch. 243, L. 1955.

**Compiler's Note**

The bracketed word "be" was inserted by the compiler.

**31-230. Dormant savings accounts—transfer—subsequent re-entry to membership.** The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years; provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

**History:** Section 31-230 added by Sec. 14, Ch. 243, L. 1955.

**Repealing Clause**

Section 15 of Ch. 243, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 16 of Ch. 243, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.



## TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 1. Highways—definitions and classifications, 32-103.  
3. Supervision of public highways, 32-302, 32-314.  
7. Public bridges, 32-713 to 32-716.  
8. Guide-boards, Repealed—Section 158, Chapter 263, Laws of 1955.  
10. Obstructions and encroachments, 32-1014.  
11. Speed and traffic regulations, 32-1123, 32-1127.  
12. Uniform accident reporting act, 32-1201, 32-1202, 32-1206 to 32-1211, 32-1213.  
15. Ferries, 32-1518.  
16. State highway commission and highway engineer—powers and duties, 32-1603, 32-1608, 32-1616, 32-1622 to 32-1625.  
20. Controlled access highways, 32-2001 to 32-2010.  
21. Uniform act regulating traffic on highways, 32-2101 to 32-21-165.

### CHAPTER 1—HIGHWAYS—DEFINITIONS AND CLASSIFICATIONS

Section 32-103. Public highways defined.

**32-103. (1612) Public highways defined.** As used in this act, “public roads and highways of this state” shall mean all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain.

**History:** En. Sec. 2600, Pol. C. 1895; amd. Sec. 1, Ch. 44, L. 1903; re-en. Sec. 1337, Rev. C. 1907; amd. Sec. 3, Ch. 72, L. 1913; re-en. Sec. 3, Ch. 141, L. 1915; re-en. Sec. 3, Ch. 172, L. 1917; re-en. Sec. 1612, R. C. M. 1921; amd. Sec. 1, Ch. 247, L. 1959. Cal. Pol. C. Sec. 2618.

#### **Amendment**

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

#### **Dedication or Abandonment**

Generally, no one except the owner of an unlimited estate or an estate in fee simple can make a dedication of land, but the owner of an equitable estate may make a dedication which will be effective

and, while a mortgagor may divest his rights in property dedicated, he cannot affect the rights of the mortgagee. *Descheemaeker v. Anderson*, 131 M 322, 310 P 2d 587, 591.

Proof of facts to constitute a dedication must be clear, satisfactory and unequivocal. *Descheemaeker v. Anderson*, 131 M 322, 310 P 2d 587, 591.

#### **Prescription**

Before a road may be established by prescription over the lands of another, the evidence must be clear and convincing that the use of the road by the public was adverse and not merely permitted by the landowner. *Descheemaeker v. Anderson*, 131 M 322, 310 P 2d 587, 589.

### CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

Section 32-302. Powers and duties of county commissioners respecting highways.  
32-314. Inspection of highways and construction work—compensation.

**32-302. (1622) Powers and duties of county commissioners respecting highways.** The boards of county commissioners of the several counties of the state have general supervision over the highways within their respective counties.

1 to 11. \* \* \* [Subdivisions 1 to 11, same as parent volume.]



12. The county commissioners of any county may, in their discretion, whenever highway construction work is to be financed in whole or in part by federal funds, and the secretary of commerce of the United States of America shall affirmatively find that under the circumstances relating to a given project some other method than competitive bidding is in the public interest, may in the construction of farm to market roads, also designated as secondary and feeder roads, enter into and contract jointly or independently with either the Montana state highway commission, the United States bureau of public roads, or any other federal agency heretofore established or which may be hereafter established, to acquire rights of way, survey, construct, and do any other thing essential and practical in securing such roads by force account, unit price or otherwise as may be agreed upon by said state highway commission and said board of county commissioners.

13. The county commissioners of any county may appoint a road foreman or supervisor who, subject to the direction and control of the commissioners, will prescribe the times and places, when and where, all work shall be done on the county roads. The foreman or supervisor shall report any delinquency or inefficiency of road employees to the commissioners for their action. The commissioners may authorize the road foreman or supervisor to hire and discharge road employees.

**History:** En. Sec. 2, Ch. 3, Ch. 172, L. 1913; amd. Sec. 2, Ch. 3, Ch. 141, L. 1915; amd. Sec. 2, Ch. 3, Ch. 172, L. 1917; amd. Sec. 1, Ch. 15, Ex. L. 1919; re-en. Sec. 1622, R. C. M. 1921; amd. Sec. 1, Ch. 128, L. 1925; amd. Sec. 1, Ch. 59, L. 1929; amd. Sec. 1, Ch. 102, L. 1947; amd. Sec. 1, Ch. 109, L. 1955; amd. Sec. 1, Ch. 128, L. 1959. Cal. Pol. C. Secs. 2641-2643.

#### Amendments

The 1955 amendment added subd. 12.

The 1959 amendment added subd. 13.

#### Repealing Clauses

Section 2 of Ch. 109, Laws 1955 and Sec. 2 of Ch. 128, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### 32-309. (1627) Removal of obstructions and repair of bridges.

#### Degree of Care

County commissioners must exercise ordinary care to keep its roads in a reasonably safe condition. *Big Head v. United States*, 166 F Supp 510, 515.

#### Notice

The provision of this section requiring actual notice is a waiver of sovereign immunity and would not apply where a private individual was involved. *Big Head v. United States*, 166 F Supp 510, 515.

**32-314. (1632) Inspection of highways and construction work—compensation.** The board of county commissioners may direct the county surveyor or some member or members of said board, to inspect the condition of any highway or highways or proposed highway or any work, contract or otherwise, under the direction, supervision or control of the county officials, being done or completed on any highway or bridge in the county during the progress of the work or before any work is commenced, or after completion and before payment therefor, and such person or persons making such inspection shall receive for making such inspection when so directed the sum of fifteen dollars (\$15.00) per day and actual expense, which shall be audited and allowed in the same manner as other claims against the county.

**History:** Ap. p. Sec. 1805, 5th Div. 1903; amd. Secs. 1-2, Ch. 76, L. 1905; Comp. Stat. 1887; amd. Secs. 2740-2741, re-en. Secs. 1387-1388, Rev. C. 1907; amd. Pol. C. 1895; amd. Secs. 51-52, Ch. 44, L. Secs. 12-13, Ch. 3, Ch. 72, L. 1913; amd.

Secs. 12-13, Ch. 3, Ch. 141, L. 1915; amd. Sec. 1, Ch. 106, L. 1917; amd. Sec. 12, Ch. 3, Ch. 172, L. 1917; amd. Sec. 4, Ch. 15, Ex. L. 1919; re-en. Sec. 1632, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1929; amd. Sec. 1, Ch. 84, L. 1953; amd. Sec. 1, Ch. 116, L. 1957.

#### Amendment

The 1957 amendment raised the inspection fee from \$12 to \$15.

#### Repealing Clause

Section 2 of Ch. 116, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 4—ESTABLISHING, ALTERING AND VACATING PUBLIC HIGHWAYS

#### 32-417. (1651) Defects in proceedings not to invalidate.

##### Compiler's Note

Under the heading References in the parent volume the cited case of Peasley v.

Trosper et al., 103 M 401, 411, 63 P 2d 131 should read 103 M 401, 411, 64 P 2d 109.

### CHAPTER 7—PUBLIC BRIDGES

Section 32-713. Construction or reconstruction of bridges.

32-714. Expending of funds—when authorized—resolution.

32-715. Allotment—when made.

32-716. Deduction of allotment from future regular apportionments to the particular financial district.

**32-713. Construction or reconstruction of bridges.** The state highway commission is hereby authorized to allocate from available state construction moneys for the federal aid highway system a sum of one million dollars (\$1,000,000.00), or so much thereof as may be necessary, in any fiscal year for the construction or reconstruction of any major bridge or bridges on the state primary or secondary highway system when the construction or reconstruction of any such bridge or bridges would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts if regularly apportioned funds were used.

**History:** En. Sec. 1, Ch. 106, L. 1955; amd. Sec. 1, Ch. 35, L. 1957.

ing that any such expenditure shall be deducted from future apportionments to the financial district; and repealing all acts and parts of acts in conflict herewith.

##### Title of Act

An act to provide for the reconstruction of major bridges on the designated primary highways of the state of Montana; providing that the highway commission must adopt a resolution as a prerequisite to expenditure; and authorizing the state highway commission to allocate funds for such purposes prior to apportionment to the financial district; provid-

##### Amendment

The 1957 amendment inserted the words "construction or" before the word "reconstruction" both times they appear and also inserted the words "or secondary" which appear between the words "primary" and "highway."

**32-714. Expending of funds—when authorized—resolution.** The allotment of funds under this act may be expended by the state highway commission on primary bridges where the engineer's estimate of cost of construction or reconstruction is in excess of the sum of five hundred thousand dollars (\$500,000.00), and on secondary bridges where the engineer's estimate of cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal aid secondary system to the county or counties for a period of three (3) years, but only when the state highway commission by resolution, as part of its finding of public necessity, declares that a bridge

should be constructed or reconstructed on a designated portion of the state primary or secondary highway.

**History:** En. Sec. 2, Ch. 106, L. 1955; amd. Sec. 2, Ch. 35, L. 1957.

#### **Amendment**

The 1957 amendment made substantial changes in this section. Prior to amendment it read "The allotment of funds under this act may be expended by the state highway commission only on bridges

where the engineer's estimate of cost of reconstruction is in excess of the sum of five hundred thousand dollars (\$500,000.-00) but only when the state highway commission by resolution, as part of its finding of public necessity, declares that a bridge should be reconstructed on a designated portion of the state primary highway."

**32-715. Allotment—when made.** The allotment of such funds shall be made from available state construction moneys before apportionment to the financial district in accordance with section 84-1817 of the Revised Codes of Montana, 1947, as amended.

**History:** En. Sec. 3, Ch. 106, L. 1955.

**32-716. Deduction of allotment from future regular apportionments to the particular financial district.** (a) The expenditure of moneys on the construction or reconstruction of primary bridges in any financial district from such allotment shall be deducted in equal installments from the future regular apportionments to that financial district over a period of not to exceed five (5) years, the first deduction commencing in the next fiscal year following the year in which the expenditure was made.

(b) The expenditure of moneys on the construction or reconstruction of secondary bridges from such allotment shall be deducted in equal installments from the future regular apportionments to the financial district pursuant to the provisions of section 84-1817 (3), Revised Codes of Montana, 1947, as amended by chapter 240, Laws of 1953, over a period not to exceed ten (10) years, the first deduction commencing in the next fiscal year following the year in which the expenditure was made.

**History:** En. Sec. 4, Ch. 106, L. 1955; amd. Sec. 3, Ch. 35, L. 1957.

#### **Amendment**

The 1957 amendment divided this section into subdivisions. In subd. (a) which was the entire section before amendment the words "on the construction or reconstruction of primary bridges" were inserted after the words "The expenditure of moneys."

#### **Repealing Clauses**

Section 5 of Ch. 106, Laws 1955 and Sec. 4 of Ch. 35, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 6 of Ch. 106, Laws 1955 provided the act should be in effect from and after the 30th day of June, 1955.

## **CHAPTER 8—GUIDE-BOARDS**

(Repealed—Section 158, Ch. 263, Laws of 1955)

### **32-801 to 32-803. (1715 to 1717) Repealed.**

#### **Repeal**

These sections (Secs. 1 to 3 of Ch. 7 of Ch. 141, L. 1915), relating to guide-boards along highways, were repealed

by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

### **32-804 to 32-806. (1718 to 1720) Repealed.**

#### **Repeal**

These sections (Secs. 1 to 3, Ch. 142, L. 1921), relating to sign boards along

highways, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.



## CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

Section 32-1014. Dumping garbage or other debris or refuse upon or near highway or public recreational property.

**32-1011. (1736) Repealed.****Repeal**

This section (Sec. 11 of Ch. 6 of Ch. 141, L. 1915), relating to a speed limit and

the posting of such limit on bridges, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

**32-1014. (1739) Dumping garbage or other debris or refuse upon or near highway or public recreational property.** It shall be unlawful for any person or persons to dump or leave any garbage, dead animal or other debris or refuse in or upon any public highway, road, street or alley of this state, or in or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof, or any officer or agent or department thereof, or within two hundred yards of such public highway, road, street, or alley or public recreational property. Any person found guilty of a violation of this section shall be fined in the sum not exceeding twenty-five dollars, or imprisoned in the county jail for a period not exceeding thirty days, or be punished by both such fine and imprisonment, in the discretion of the court. The provisions of this section shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana; provided, however, that game wardens shall have the right to enforce the provisions of this section in public recreational property.

**History:** En. Sec. 90, Ch. 44, L. 1903; re-en. Sec. 1434, Rev. C. 1907; re-en. Sec. 14, Ch. 6, Ch. 72, L. 1913; re-en. Sec. 14, Ch. 6, Ch. 141, L. 1915; re-en. Sec. 1739, R. C. M. 1921; amd. Sec. 1, Ch. 237, L. 1959. Cal. Pol. C. Sec. 2737.

**Amendment**

The 1959 amendment completely re-

vised this section. For section prior to amendment see parent volume.

**Repealing Clause**

Section 2 of Ch. 237, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**32-1015. (1740) Repealed.****Repeal**

This section (Sec. 15 of Ch. 6 of Ch. 141, L. 1915), relating to the depositing of dangerous articles on the highways,

was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955. For new provision see Sec. 32-21-111.

**32-1017. (1741.1) Repealed.****Repeal**

This section (Sec. 1, Ch. 74, L. 1929), relating to a penalty for the defacing of

signs or barriers on roads closed to traffic, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

## CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

Section 32-1123. Standards of maximum dimensions, weights, speeds, etc.  
32-1127. Permits for excess size and weight.

**32-1101, 32-1102. (1742, 1743) Repealed.****Repeal**

These sections (Secs. 7, 8, Ch. 75, L. 1917; amd. Sec. 1, Ch. 80, L. 1927), relat-

ing to speed and traffic regulations, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.



**32-1103. (1743.1) Repealed.****Repeal**

This section (Sec. 1, Ch. 33, L. 1933; amd. Sec. 1, Ch. 70, L. 1949), relating to the requirement that vehicles carrying ex-

plosives or passengers for hire stop at railroad crossings, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

**32-1104. (1744) Repealed.****Repeal**

This section (Sec. 81, Ch. 44, L. 1903; re-en. Sec. 1, Ch. 8 of Ch. 72, L. 1913; re-en. Sec. 1, Ch. 8 of Ch. 141, L. 1915),

relating to rules upon the meeting of vehicles on highways, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

**32-1105. (1745) Repealed.****Repeal**

This section (Sec. 82, Ch. 44, L. 1903; re-en. Sec. 2, Ch. 8 of Ch. 72, L. 1913; re-en. Sec. 2, Ch. 8 of Ch. 141 L. 1915),

prohibiting the employment of drunkards as drivers, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

**32-1106. (1746) Repealed.****Repeal**

This section (Sec. 83, Ch. 44, L. 1903; re-en. Sec. 3, Ch. 8 of Ch. 72, L. 1913; re-en. Sec. 3, Ch. 8 of Ch. 141, L. 1915),

providing for the discharge from employment of intoxicated drivers, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

**32-1107 to 32-1109. (1746.1 to 1746.3) Repealed.****Repeal**

These sections (Secs. 1, 3, 4, Ch. 166, L. 1929; amd. Secs. 1, 2, Ch. 198, L. 1943), relating to drunken driving and penalties

therefor, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955. For new provision see Sec. 32-2142.

**32-1111. (1747) Repealed.****Repeal**

This section (Sec. 84, Ch. 44, L. 1903; re-en. Sec. 4, Ch. 8 of Ch. 72, L. 1913; re-en. Sec. 4, Ch. 8 of Ch. 141, L. 1915),

relating to the duty of drivers to guard against runaway horses, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

**32-1113. (1748.1) Owner or operator of vehicle released, etc.****Operation and Effect**

Where the owner of a truck and his passengers were engaged in a rescue mission during a flood, and the owner was not paid anything nor was he getting any

personal benefit, a passenger who went on the mission of his own accord was a "guest" within the meaning of the statutes. *Watkins v. Williamson*, 132 M 46, 314 P 2d 872, 875.

**32-1114. (1748.2) Assumption of risk by guest in motor vehicle, when.****References**

Cited or applied in *Watkins v. Williamson*, 132 M 46, 314 P 2d 872, 875.

**32-1115. (1748.3) Imputation of ordinary negligence to guest.****Instructions**

In plaintiff's action against defendant road contractor for personal injuries sustained when automobile driven by plaintiff's husband ran into ditch in street, instruction was erroneous and prejudicial to

plaintiff which did not define contributory negligence as want of ordinary care and failed to adhere to the strict formula of proximate cause. *Wolf v. Barry O'Leary, Inc.*, 132 M 468, 318 P 2d 582, 585.

**32-1123. Standards of maximum dimensions, weights, speeds, etc.** The following standards are hereby made applicable to, and shall govern the maximum dimensions, weights and speeds of motor vehicles, and other characteristics and factors thereof, operating over the highways of, and

in the state of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter:

(1) Width—No vehicle, unladen or with load, shall have a total outside width in excess of ninety-six (96) inches, except busses which may have a total outside width not to exceed one hundred two (102) inches, and such bus width shall be allowed only on paved highways twenty (20) feet or more in width; provided, however, that this restriction does not apply to implements of husbandry moved or propelled upon the highway during daylight hours for a distance of not more than fifty (50) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry; provided, further, that with respect to such implements of husbandry having a width in excess of twelve (12) feet, it shall be preceded and followed by flagmen escorts for the purpose of warning other highway users.

(2) Height—No vehicle, unladen or with load, shall exceed a height of thirteen (13) feet, six (6) inches.

(3) Length—(a) No single truck, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(b) No single bus, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(c) No combination of (1) truck-tractor and semitrailer, (2) truck and trailer, or other combination of vehicles, shall consist of more than two units except that, at the discretion of the state highway commission, they may permit combinations of vehicles of not more than three units consisting of (3) tractor-semitrailer-semitrailer converted to full trailer by use of a dolly equipped with fifth wheel which shall be considered a part of the trailer for all purposes and not as a separate unit, or (4) tractor-semitrailer-full trailer, and no such combination of vehicles, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear unit of such combination shall be equipped with breakaway brakes.

(d) No motor vehicle shall tow more than one motor vehicle and no motor vehicle shall draw more than two motor vehicles attached thereto by the dual saddlemount method, that is by mounting the front wheels of one vehicle on the bed of another leaving the rear wheels only of such vehicle in contact with the roadway, nor shall such combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(e) No passenger vehicle or truck of less than two thousand (2000) pounds "manufacturers' rated capacity" shall tow more than one (1) trailer or semitrailer, nor shall such combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(4) Speed—(a) Minimum speed. No motor vehicle shall be unnecessarily driven at such slow speed as to impede or block the normal and reasonable movement of traffic. Exception to this requirement shall be recognized when reduced speed is necessary for safe operation or when a

vehicle or combination of vehicles is necessarily or in compliance with law or police direction proceeding at reduced speed.

(b) Maximum speed. No person shall operate any truck or truck-tractor, the gross weight of which exceeds eight thousand (8000) pounds, at a speed greater than fifty (50) miles per hour.

(c) Vehicles equipped with solid rubber or cushion tires shall be operated at a speed not in excess of ten (10) miles per hour.

(5) Permissible Loads—(a) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(b) The gross weight of any group of axles of any vehicle or combination of vehicles, when the distance between the first and last axles of any group of axles is eighteen (18) feet or less, and the gross weight of any vehicle when the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, shall not exceed that set forth in the following table of weights:

Distance in feet between the first and last axles of any group of axles of any vehicle or combination of vehicles, or between the first and last axles of all of the axles of any vehicle.

Maximum gross weight, in pounds, of any group of axles of any vehicle or combination of vehicles, or of any vehicle.

4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(c) The gross weight of any vehicle or combination of vehicles, where the distance between the first and last axles of the vehicle or combination of vehicles is more than eighteen (18) feet, shall not exceed that set forth in the following table of weights:

Distance in feet between the first and last  
axles of all of the axles of a vehicle or  
combination of vehicles.

Maximum gross weight, in pounds, of any  
vehicle or combination of vehicles.

18	46,400
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100
27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	68,000
40	70,000
41	72,000
42	73,280
43	73,280
44	73,280
45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400
54	75,200
55	76,000
56	76,400
57	76,800

(d) The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half ( $\frac{1}{2}$ ) foot the next larger whole number shall be used.

(e) The maximum axle and axle group loads stated in paragraphs (a), (b) and (c) of clause (5) above are subject to reasonable reduction in the discretion of the state highway commission during periods when road subgrades have been weakened by water saturation or other causes.



(f) The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits herein recommended shall be permitted only if and when authorized by special permit issued by the state highway commission or its officers, supervisors or agents acting pursuant to duly delegated authority from said commission, including the state highway patrol.

**History:** En. Sec. 2, Ch. 123, L. 1947; amd. Sec. 1, Ch. 73, L. 1953; amd. Sec. 1, Ch. 250, L. 1955; amd. Sec. 1, Ch. 221, L. 1959.

#### Amendments

The 1955 amendment added to subd. (1) all that portion appearing after the words "ninety-six (96) inches"; paragraphs (c) and (d) of subd. (3) were completely rewritten, prior to this amendment they read "(c) No combination of truck-tractor and semitrailer, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of 60 ft. (d) No other combination of vehicles shall consist of more than two units, and no such combination of vehicles, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of 60 ft."; added paragraph (e) to subd. (3) and from the end of paragraph (e) of subd. (5) deleted the words "provided that the maximum limitations expressed in paragraphs (a), (b) and (c) of clause (5) shall not apply to the incidental and occasional use of such highways by vehicles not usually, or ordinarily engaged in highway use and employed primarily in agricultural or industrial uses other than on such highways."

The 1959 amendment substituted present paragraph (b) of subd. (4) for a paragraph reading, "(b) Maximum speed. No truck shall be operated at a speed greater than forty-five (45) miles per hour. Passenger vehicles may be operated at such

speeds as shall be consistent at all times with safety and the proper use of the roads"; and amended paragraph (c) of subd. (5) so as to increase the maximum gross weight for 39-foot wheel base vehicles or combinations from 67,150 to 68,000 pounds; for 40-foot vehicles, from 68,000 to 70,000 pounds; for 41-foot vehicles, from 68,000 to 72,000 pounds; for 42, 43, 44 and 45-foot vehicles, from 68,000 to 73,280 pounds; for 46-foot vehicles, from 68,800 to 73,280 pounds; for 47-foot vehicles, from 69,600 to 73,280 pounds; for 48-foot vehicles, from 70,400 to 73,280 pounds; for 49-foot vehicles, from 71,200 to 73,280 pounds; for 50-foot vehicles, from 72,000 to 73,280 pounds; and for 51-foot vehicles, from 72,800 to 73,280 pounds.

#### Repealing Clauses

Section 2 of Ch. 250, Laws 1955 and Sec. 2 of Ch. 221, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Snow Conditions

When traveling under snow conditions a driver should be alert for approaching vehicles and should take steps to keep his vehicle under control while passing through a snow cloud. Similarly, a driver following such a cloud should remain a safe distance behind, taking into consideration the probability that other vehicles will be coming through the cloud under conditions of reduced visibility. *Merithew v. Hill*, 167 F Supp 320, 327.

**32-1127. (1751.6) Permits for excess size and weight.** The state highway commission, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing, authorizing the applicant to operate or move a vehicle of a size or weight exceeding the maximum specified in this act upon any highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; provided, however, that no permits are to be issued for movement of vehicles carrying build-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in this act; provided, however, that no permits are to be issued for the moving of loads for any considerable distances over such highways when the loads in question are of such excess width that all traffic lanes upon the highway concerned would be blocked to the serious inconvenience of normal traffic; and further provided that no permits are to be granted for the moving of loads of such excess width that a hazard to traffic would be

involved for any considerable distances over the highways concerned except to those applicants who carry public liability and property damage insurance for the protection of the traveling public as a whole. No permit shall be issued for a period of more than nine (9) months.

The applicant for any special permit shall specifically describe the vehicle or vehicles and load to be operated or moved, and the particular state highways for which permit to operate is requested and whether such permit is required for single trip or for continuous operation. All fees collected under this act shall be forwarded to the state treasurer for deposit in the state highway general fund.

(a) Special Permits—Discretion of Issuer—Conditions. The state highway commission or local authority is authorized to issue or withhold such special permit at its discretion, or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicle described may be operated on the public highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure.

(b) Special Permits—Fees. The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the state highway commission:

Three dollars (\$3.00) for each permit issued in excess of the size and weight specified in this act: provided, however, that term or blanket permits shall not be issued for overwidth loads in excess of fifteen (15) feet, overlength loads in excess of seventy (70) feet, and overheight loads in excess of a limit determined by the highway commission. Loads in excess of these dimensions will be limited to trip permits.

In addition to the three dollar (\$3.00) fee specified herein for overweight permits, there shall be charged (1) for single trip permits five dollars (\$5.00) for distances to and including one hundred (100) miles, fifteen dollars (\$15.00) for distances from one hundred one (101) to one hundred ninety-nine (199) miles, and twenty-five dollars (\$25.00) for distances over two hundred (200) miles traveled, for such excess load over the gross allowable load specified in this section or the sum of the excess axle loads, whichever is greater.

(c) Special Permits—Misrepresentations and Violations—Penalty—Display of Permit. Any person who knowingly and wilfully misrepresents the size or weight of any load in obtaining a special permit or does not follow the requirements and conditions of the special permit or who operates any vehicle, the gross weight of which is in excess of the maximum for which such vehicle may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

Every special permit issued hereunder shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or

employees of the maintenance department of the Montana highway commission.

A peace officer, officer of the Montana highway patrol, or employees of the maintenance department of the Montana highway commission who shall find any person operating a vehicle in violation of the conditions of a special permit issued hereunder may confiscate such permit and forward the same to the state highway commission which may return it to the permittee or revoke, cancel, or suspend it without refund. The state highway commission shall keep a record of all action taken upon permits so confiscated and if a permit shall be returned to the permittee, the action taken by the commission shall be endorsed thereon. Any permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after such hearing, may reinstate any permit or revise its previous action.

**History:** En. Sec. 6, Ch. 171, L. 1931; amd. Sec. 2, Ch. 147, L. 1933; amd. Sec. 5, Ch. 184, L. 1939; amd. Sec. 1, Ch. 254, L. 1955.

#### **Amendment**

The 1955 amendment inserted the first proviso clause in the first paragraph; deleted the words "and every such permit shall designate the routes to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting such permit, and may be cancelled at any time by such body for cause. Every such permit or a true copy thereof shall be carried in the vehicle to which

it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employees of the maintenance department of the Montana highway commission and it shall be a misdemeanor for any person, firm or corporation to violate any of the terms or conditions of such permit" which appeared at the end of the first paragraph and added all of this section following the first paragraph.

#### **Repealing Clause**

Section 2 of Ch. 254, Laws 1955 repealed all acts and parts of acts in conflict therewith.

### **32-1132, 32-1133. (1753, 1754) Repealed.**

#### **Repeal**

These sections (Secs. 9, 11, Ch. 75, L. 1917; amd. Sec. 1, Ch. 110, L. 1919), relating to required accessories on motor

vehicles and providing a penalty, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

### **32-1134 to 32-1137. (1754.1 to 1754.4) Repealed.**

#### **Repeal**

These sections (Secs. 1 to 4, Ch. 134, L. 1931), relating to driving on highways under construction and detours, designa-

tion of through routes, and prohibiting the parking on bridges or obstructing highways, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

### **32-1138, 32-1139. (1754.5, 1754.7) Repealed.**

#### **Repeal**

These sections (Secs. 1, 3, Ch. 70, L. 1933), relating to the concealing of identity after an accident and providing a

penalty therefor, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

### **32-1140 to 32-1142. (1754.8 to 1754.10) Repealed.**

#### **Repeal**

These sections (Secs. 1 to 3, Ch. 81, L. 1933), relating to lights on the rear of

vehicles, and on protruding loads or vehicles, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

### **32-1146. Repealed.**

#### **Repeal**

This section (Sec. 1, Ch. 96, L. 1947), relating to the right of way of motorized

fire equipment, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.



## CHAPTER 12—UNIFORM ACCIDENT REPORTING ACT

## Section 32-1201. Definitions.

- 32-1202. Accidents involving death or personal injuries.
- 32-1206. Duty upon striking fixtures, or other property upon a highway.
- 32-1207. Immediate notice of accidents.
- 32-1208. Written reports of accidents, additional information, form of report.
- 32-1209. When driver unable to report.
- 32-1210. Accident report forms.
- 32-1211. Coroners to report.
- 32-1213. Accident reports confidential.

**32-1201. Definitions.** The following words and phrases used in this act shall, for the purpose of this act, have the meanings respectively ascribed to them in this act.

- (a) Registrar. The registrar of motor vehicles of this state.
- (b) Supervisor. The supervisor of the Montana highway patrol.
- (c) Board. The Montana highway patrol board of this state, acting through its duly authorized officers and agents.

**History:** En. Secs. 1, 2, Ch. 210, L. 1939; amd. Sec. 1, Ch. 256, L. 1959. (b) for one that read "Supervisor. The Montana highway patrol board, its duly appointed supervisor and patrolmen" and added subd. (c).

**Amendment**

The 1959 amendment substituted subd.

**32-1202. Accidents involving death or personal injuries.** (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 32-1204. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than thirty (30) days, nor more than one (1) year, or by a fine of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00), or by both such fine and imprisonment.

(c) The board shall revoke the license or permit to drive of any resident and any nonresident's operating privilege of any person, so convicted for the period prescribed in section 31-149, Revised Codes of Montana, 1947, as amended.

**History:** En. Sec. 3, Ch. 210, L. 1939; Subd. (c) amd. Sec. 1, Ch. 212, L. 1947; amd. Sec. 2, Ch. 256, L. 1959.

ent subd. (c) for one that read "The registrar shall revoke the operator's or chauffeur's license of the person so convicted for a period of three (3) years from and after such conviction."

**Amendment**

The 1959 amendment substituted pres-

**32-1206. Duty upon striking fixtures, or other property upon a highway.** The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in section 32-1208.



**History:** En. Sec. 7, Ch. 210, L. 1939;  
amd. Sec. 3, Ch. 256, L. 1959.

**Amendment**

The 1959 amendment inserted the words  
"or other property" in this section.

**32-1207. Immediate notice of accidents.** The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of one hundred dollars (\$100.00) or more shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol.

**History:** En. Sec. 8, Ch. 210, L. 1939;  
amd. Sec. 4, Ch. 256, L. 1959.

**Amendment**

The 1959 amendment inserted the words  
"or property damage to an apparent extent  
of one hundred dollars (\$100.00) or

more"; substituted "highway patrol" for  
"supervisor" and deleted former subd.  
(b) which required the coroner to notify  
the office of the supervisor of a death re-  
sulting from a traffic accident within his  
jurisdiction.

**32-1208. Written reports of accidents, additional information, form of report.** (a) The driver of a vehicle which is in any manner involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of one hundred dollars (\$100), or more shall within ten (10) days after such accident, forward a written report of such accident to the board.

(b) Additional information. The board may require any driver of a vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report is insufficient, and may require witnesses of accidents to render reports.

(c) Every law enforcement officer who in the regular course of duty, investigates a motor vehicle accident, of which report must be made as required in this act, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall within ten (10) days after completing such investigation, forward a written report of such accident to the board.

(d) Form of report. The form of accident report required under section 32-1208 [this section], shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exceptions specified in this act.

**History:** En. Sec. 9, Ch. 210, L. 1939;  
amd. Sec. 5, Ch. 256, L. 1959.

**Amendment**

The 1959 amendment in subd. (a) inserted the words "which is in any manner"; inserted the word "bodily"; raised \$25 to \$100; changed 24 hours to 10 days,

and substituted "board" for "supervisor." In subd. (b) the amendment substituted "board" for "supervisor." In subd. (c) the amendment substituted "act" for section; changed 24 hours to 10 days and substituted "board" for "supervisor." The amendment also added subd. (d).

**32-1209. When driver unable to report.** (a) An accident report is not required under this act from any person who is physically incapable of making such report during the period of such incapacity.

(b) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in section 32-1207, and

there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.

(c) Whenever the driver is physically incapable of making a written report of an accident as required in section 32-1208, and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall within ten (10) days after learning of such accident, make such report not made by the driver.

(d) False reports. Any person who gives information in reports as required in section 32-1208, or in this section, knowing or having reason to believe that such information is false shall be fined not more than five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both.

**History:** En. Sec. 10, Ch. 210, L. 1939; (c) and (d) and made numerous changes  
amd. Sec. 6, Ch. 256, L. 1959. in subd. (b). For section prior to amend-  
ment see parent volume.

#### **Amendment**

The 1959 amendment added subds. (a),

**32-1210. Accident report forms.** (a) The board shall prepare and upon request supply to police departments, coroners, sheriffs, garages and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with references to a traffic accident the causes, conditions then existing, and the persons and vehicles involved.

(b) Every accident report required to be made in writing shall be made on the appropriate form approved by the board and shall contain all of the information required therein unless not available.

(c) Penalty. The board may suspend the license or permit to drive of any resident and any nonresident operating privilege of any person failing to report an accident as herein provided until such report has been filed. Any person convicted of failing to report an accident by the quickest means of communication or failing to forward a written report as required herein shall be deemed guilty of a misdemeanor and punished by a fine of not more than twenty-five dollars (\$25.00).

**History:** En. Sec. 11, Ch. 210, L. 1939;  
amd. Sec. 7, Ch. 256, L. 1959.

#### **Amendment**

The 1959 amendment in subds. (a) and (b) substituted "board" for "supervisor" and added all of subd. (c).

**32-1211. Coroners to report.** Every coroner or other official performing like functions shall on or before the 10th day of each month report in writing to the board the death of any person within his jurisdiction during the preceding calendar month as the result of a traffic accident, giving the time and place of the accident and the circumstances relating thereto.

**History:** En. Sec. 12, Ch. 210, L. 1939;  
amd. Sec. 8, Ch. 256, L. 1959.

#### **Amendment**

The 1959 amendment substituted "board" for "supervisor" and substituted "a traffic accident, giving the time and

place of the accident and the circumstances relating thereto" for "an accident involving a motor vehicle and the circumstances of such accident."

**32-1213. Accident reports confidential.** (a) All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the board or other state agencies having use for the records for accidental prevention purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the board may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident.

(b) All accident reports and supplemental information filed in connection with the administration of the laws of this state relating to the deposit of security or proof of financial responsibility shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that such reports and supplemental information may be examined by any person named therein or by his representative designated in writing.

(c) No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the board shall furnish upon demand of any person who has, or claims to have, made such a report or upon the demand of any court, a certificate showing that a specified accident report has or has not been made to the board solely to prove a compliance or a failure to comply with the requirement that such a report be made to the board.

**History:** En. Sec. 14, Ch. 210, L. 1939; amd. Sec. 9, Ch. 256, L. 1959.

posit of security and proof of financial responsibility by persons driving or the owners of motor vehicles" in subd. (a) and added subd. (b).

**Amendment**

The 1959 amendment subdivided this section into three subdivisions; substituted "board" for "supervisor" each time it appears in subds. (a) and (c); inserted the words "or for the administration of the laws of this state relating to the de-

**Repealing Clause**

Section 10 of Ch. 256, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 15—FERRIES

Section 32-1518. Tax levy for construction, maintenance, and repair of public ferries.

**32-1518. Tax levy for construction, maintenance, and repair of public ferries.** The board of county commissioners may levy a special tax not to exceed two (2) mills on the dollar of the taxable property of the county for the purpose of constructing, maintaining and repairing public ferries.

**History:** En. Sec. 1, Ch. 53, L. 1959.

maintaining and repairing public ferries; and providing for a repealing clause.

**Title of Act**

An act to provide that the board of county commissioners may levy a special tax not to exceed two (2) mills on the dollar of the taxable property of the county for the purpose of constructing,

**Repealing Clause**

Section 2 of Ch. 53, Laws 1959 repealed all acts and parts of acts in conflict therewith.



CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY  
ENGINEER—POWERS AND DUTIES

- Section 32-1603. Duties of commission—reports.  
 32-1608. Contracts, how awarded.  
 32-1616. Highway commission may sell or trade lands when and how, personal property and printed matter.  
 32-1622. Authority for agreements to study, analyze, or test the effects of weights on highways.  
 32-1623. Designation of highways not located entirely and continuously within state as state highways—conditions.  
 32-1624. Powers regarding such highways.  
 32-1625. Facilities of utilities—relocation—cost—definitions.

**32-1601. (1783) State highway commission—creation—salary—bond, etc.****References**

Cited or applied in *Anderson v. United States Civil Service Comm.*, 119 F Supp 567, 573.

**32-1603. (1785) Duties of commission—reports.** The state highway commission shall maintain and preserve all its records in its office at the capitol; said office shall be kept open at such times as the business of the commission shall require. The commission shall file and safely keep a record of all proceedings and orders pertaining to the matters under its direction and copies of all plans, specifications, contracts, estimates and official acts. The commission shall prepare and submit to the governor on or before the fifteenth day of each month a report of the work constructed, under construction, and proposed for construction and the progress made during the preceding month, and shall make recommendations as to the needed improvements and their estimated cost. The commission shall prepare and submit to the governor and the legislative assembly during its regular session, and not later than the fifth legislative day, a comprehensive-condensed report of the commission's activities for the preceding biennium. Such report shall include an accounting for all moneys received from federal or state sources; a review of projects undertaken and completed; a summary of maintenance work performed by the commission; statistical tables covering personnel changes, compensation and status; a review of right-of-way procurement experience, including condemnation proceedings and average price paid per acre of land in representative areas of the state, and all other matters which would assist the legislative assembly in determining the financial and legal requirements of the commission for the following biennium.

**History:** En. Sec. 3, Ch. 10, Ex. L. 1921; re-en Sec. 1785, R. C. M. 1921; amd. Sec. 3, Ch. 86, L. 1945; amd. Sec. 1, Ch. 98, L. 1959.

sentences to this section relating to the biennial report.

**Repealing Clause**

Section 2 of Ch. 98, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment added the last two

**32-1608. (1790) Contracts, how awarded.** All contracts for work on state highways shall be let by the state highway commission, except as hereinafter provided. When the estimated cost of any piece of work shall exceed one thousand dollars (\$1,000.00), it shall be the duty of the state highway commission to let such contract by competitive bidding, upon such



notice and upon such terms as the commission by its rules and regulations prescribe; provided that if the commission shall find such work may be done and performed by force account or by day's labor in a more efficient manner, it may so conduct the work, and provided further that the commission may use convict labor as, in its judgment, is deemed proper. A contractor upon being awarded a contract for construction, improvement, maintenance or marking upon a state highway, and before entering upon such work shall execute to the state of Montana a bond to be approved by the commission, and to be conditioned for the faithful discharge of its duties under such contract. Provided, however, that on any highway construction work, which is financed in whole or in part by federal funds, and the secretary of commerce of the United States of America shall affirmatively find that under the circumstances relating to a given project some other method than competitive bidding is in the public interest, the state highway commission is authorized and empowered to enter into contracts with any board of county commissioners of any county, whereby such county is authorized to acquire rights of way, survey and construct farm to market, secondary or feeder roads within such county, by force account, unit price or otherwise, as may be agreed upon by said state highway commission and said board of county commissioners.

All contracts for work on state highways where federal and/or state funds are involved shall, when applicable, contain the prevailing rates of wages as set by collective bargaining in effect in the areas covered by heavy and highway labor agreements.

**History:** En. Sec. 8, Ch. 10, Ex. L. 1921; re-en. Sec. 1790, R. C. M. 1921; amd. Sec. 1, Ch. 91, L. 1955; amd. Sec. 1, Ch. 43, L. 1957.

#### Amendments

The 1955 amendment inserted the words "except as hereinafter provided" at the end of the first sentence and added the proviso clause.

The 1957 amendment added the second paragraph.

#### Repealing Clauses

Section 2 of Ch. 91, Laws 1955 and

Sec. 2 of Ch. 43, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Street Improvements by Municipality

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the contracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

### 32-1609. (1791) Assent to federal aid road act.

#### Operation and Effect

Where, in order to comply with federal requirements in order to make a city street part of federal aid highway, the city adopted a resolution limiting its power to place speed limits and signs on the street, it was not a surrender of the police power of the city, but rather a limitation upon the method or means by

which such power might be exercised. City streets belong to the state and the city is but the trustee thereof. *Bidlingmeyer v. City of Deer Lodge*, 128 M 292, 274 P 2d 821, 823.

#### References

Cited or applied in *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061.

### 32-1611, 32-1612. (1793, 1794) Repealed.

#### Repeal

These sections (Secs. 11, 12, Ch. 10, Ex. L. 1921), relating to the erection of standard guide signs and providing a penalty

for the defacing thereof, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1616. Highway commission may sell or trade lands when and how, personal property and printed matter. (a) The state highway commission of the state of Montana shall have the power to sell any interest in real estate, however acquired, by its state highway commission, belonging to the state of Montana and which is not necessary to the laying out, altering, construction, improvement or maintenance of any state highway. If the property sought to be sold is reasonably of a value in excess of one hundred dollars (\$100.00), the sale shall be to the highest bidder at public auction or by sealed bids to the discretion of the highway commission, at the office of the state highway commission, highway building in the city of Helena, Montana, after previous notice given by publication in a newspaper published in the county in which said real estate is situated, notice to be published once a week for two (2) successive weeks. Provided, however, the landowner from whom such land had been originally acquired by the state, or his successor in interest, shall have the option to purchase such land by offering therefor an amount of money equal to the highest bid received for such land. Such offer must be sent to the state highway commission by registered mail within ten (10) days from the date of such sale and such sale shall be for cash, lawful money of the United States. In all sales in property of a value in excess of one hundred dollars (\$100.00) there must, before any sale, be an appraisal thereof by the highway commission and at a price representing a fair market value of such property and such appraised value shall be stated in the notice of sale. No sale shall be made of any property unless it has been appraised within three (3) months prior to the date of sale and no such sale shall be made for less than ninety per cent (90%) of the appraised value. If no bid or offer is made for any property offered for sale after appraisal and notice given as provided herein, the highway commission may at any time thereafter sell such property at private sale and may on such private sale accept as the purchase price therefor an amount not less than ninety per cent (90%) of the appraised value thereof. No title to any property sold under the provision thereof shall pass from the state of Montana until the purchaser shall have paid the full amount of the purchase price therefor into the state treasury to the credit of the state highway fund. Provided, however, that whenever the state highway commission determines that any real property or any interest therein which is owned by the state through its state highway commission, however acquired, is no longer necessary to the laying out, altering, construction, improvement or maintenance of any state highway, the highway commission may exchange such real property or any interest therein, either as whole or partial consideration, for any other real property or interest therein needed for highway purposes, in the manner and upon the terms and conditions approved by the highway commission. Provided further, that the landowner from whom such land had been originally acquired by the state, or his successor in interest, shall have the right to require the state highway commission to offer such land for sale upon the same terms and conditions hereinbefore set out. The state highway commission must notify such landowner or successor in interest of its intention to exchange such real property and such landowner or successor in interest must make his demand for sale upon the state highway commis-

sion by registered mail within ten (10) days after receipt of such notice of intention to exchange.

(b) The state highway commission shall further have the power to sell at public or private sale, to be determined by the commission, any interest in personal property however acquired by the state highway commission, and belonging to the state of Montana, and which is not necessary to the laying out, altering, construction, improvement or maintenance of any state highway or the administration thereof.

(c) The highway commission shall also have the power to sell at public or private sale, maps, books, pamphlets or other printed matter prepared, or acquired, by the highway commission, and copies of any highway records to the public, and is authorized to set a reasonable price therefor.

The proceeds from each such sale shall be paid into the state treasury to the credit of the state highway fund.

**History:** En. Sec. 1, Ch. 92, L. 1939; amd. Sec. 1, Ch. 210, L. 1959.

#### **Amendment**

The 1959 amendment designated the previous text of the section as subd. (a); inserted the words "by its state highway commission" after "however acquired" in the first sentence of subd. (a); deleted the words "and purchased by highway funds" where; they followed "belonging to the state of Montana" in the first sentence of subd. (a); inserted the proviso relating

to former owner's option to purchase as the third sentence of subd. (a); inserted at the beginning of the present fourth sentence of subd. (a) the clause pertaining to former owner's offer to purchase; added the ninth, tenth, and eleventh sentences of subd. (a), and added subds. (b) and (c).

#### **Repealing Clause**

Section 2 of Ch. 210, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**32-1622. Authority for agreements to study, analyze, or test the effects of weights on highways.** The state highway commission is authorized to make and enter into agreements with the federal government or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weights on highway construction. Such studies or tests may be made either by designating existing highway or the construction of test strips, including natural resource roads, to the end that a proper solution of the many problems connected with the imposition on highways of motor vehicle weights may be determined.

Such studies may determine the determination of values to be assigned various highway-user groups according to their gross weight or use.

**History:** En. Sec. 1, Ch. 15, L. 1955.

#### **Title of Act**

An act providing for the state highway commission to enter into agreements with the federal government, or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weights on highway construction; and repealing all acts and parts of acts in conflict therewith.

#### **Repealing Clause**

Section 2 of Ch. 15, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 15, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 5, 1955.

**32-1623. Designation of highways not located entirely and continuously within state as state highways—conditions.** The state highway commission



is hereby authorized to designate such public roads as shall be classed as state highways and subject to improvements under the provisions of the Federal Aid Road Act of Congress, approved July 11, 1916, and all other acts granting aid for public highways, even though such road or highway is not located entirely and continuously within the boundaries of the state of Montana. The designation of such roads or highways shall meet the following conditions:

(1) That it shall be on an approved federal aid route and eligible for improvement under the Federal Aid Highway Acts;

(2) That the location of a portion of such route outside the boundaries of the state of Montana is necessary because of natural geographical or physical conditions which make the construction of the highway within the state of Montana impossible or impracticable;

(3) That the portion of such route located outside the state of Montana does not connect with and is not a part of the state highway system of the adjoining state.

**History:** En. Sec. 1, Ch. 30, L. 1955.

#### **Title of Act**

An act to provide for the construction and maintenance of state highways which serve the people of the state of Montana, are located primarily in the state of Montana, and which are partially located outside the boundaries of the state of Montana because of geographical or other physical conditions which make it impossible or impracticable to locate or construct or reconstruct said highways en-

tirely within the boundaries of the state of Montana; providing that said portion of highway outside the state of Montana does not connect to or is not a part of the state highway system of any adjoining state; providing that the cost of construction, reconstruction, engineering, administration, betterment and maintenance shall be paid out of funds of the state highway commission; repealing all acts and parts of acts in conflict therewith and providing an effective date.

**32-1624. Powers regarding such highways.** The state highway commission is authorized to do all things necessary or required to carry out fully the cooperation contemplated under the Federal Aid Highway Acts with regard to such roads and to expend funds for the construction, reconstruction, engineering, administration, betterment and maintenance thereof.

**History:** En. Sec. 2, Ch. 30, L. 1955.

#### **Repealing Clause**

Section 3 of Ch. 30, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 30, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 17, 1955.

**32-1625. Facilities of utilities — relocation — cost — definitions.** (a) The state highway commission shall have the power and authority to make and publish after appropriate hearings reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "facilities") of any utility in, on, along, over, across, through or under any project on (1) the Federal-Aid Primary System, or (2) the Federal-Aid Secondary System, or on (3) the Interstate System, including extensions thereof within urban areas. Whenever the commission shall determine, after written notice supplied to all concerned not less than twenty (20) days in advance of hearing and fair, public hearing at the time and place noticed for hearing (unless hearing



is waived by the utility or other interested parties in writing), that it is necessary that any such facilities which now are, or hereafter may be, located in, on, along, over, across, through or under any such Federal-Aid Primary System, Federal-Aid Secondary System, or on the Interstate System, including extensions thereof within urban areas, should be relocated, the utility owning or operating such facilities shall relocate the same in accordance with the valid order of the commission, and seventy-five per cent (75%) of all costs of relocation, including acquisition of new right of way, dismantling, and removal, shall be paid by the state of Montana through the state highway commission. In case of any such relocation of facilities, as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations.

(b) Definitions. For the purposes of this section:

The term "utility" shall include publicly, privately and cooperatively owned utilities.

The term "cost of relocation" shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility; and,

The term "Interstate System" means any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, as provided in the Federal-Aid Highway Act of 1956, and any acts supplemental thereto or amendatory thereof.

(c) The cost of relocating utility facilities in connection with any project on the Federal-Aid Primary System or Federal-Aid Secondary System or on the Interstate System is hereby declared to be a cost of highway construction.

**History:** En. 32-1625 by Sec. 1, Ch. 254, L. 1957.

#### **Title of Act**

An act to amend and supplement chapter 16, entitled "State Highway Commission and Highway Engineer—Powers and Duties," of Title 32, "Highways, Bridges and Ferries," Revised Codes of Montana, 1947, as amended and supplemented, by adding to said chapter 16, a new section to be numbered section 32-1625 of said codes, to empower the state highway commission of the state of Montana to make reasonable regulations for the removal, relocation, renewal and reconstruction of facilities of any utility, whether public, private or cooperatively owned, in connection with any project on any Federal-Aid Primary Highway System, Federal-Aid Secondary Highway System, or on any Interstate Highway System, and to require utilities to relocate the same in accordance with valid orders of the commission: providing that seventy-five per cent (75%) of the costs of removal, relocation including acquisition of any new right of way, renewal and reconstruction

of such facilities, shall be paid by the state of Montana through the state highway commission and that any such utilities may maintain and operate any such facilities in the new location or locations; defining terms used in this act; repealing all acts and parts of acts in conflict with this act; and providing for an effective date.

#### **Constitutionality**

Section 2 of Ch. 254, Laws 1957 read "If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislative assembly hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts would be declared unconstitutional."

#### **Repealing Clause**

Section 3 of Ch. 254, Laws 1957 read "This act is hereby declared to be superior to and of controlling force over any code provisions, statutes, session laws, and acts in any respect conflicting herewith, and all acts and parts of acts in conflict herewith are hereby repealed."

**Effective Date**

Section 4 of Ch. 254, Laws 1957 provided the act should be in effect from and

after its passage and approval. Approved March 19, 1957.

## CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

- Section 32-2001. Purpose.  
 32-2002. Definitions.  
 32-2003. Designation as controlled access highway—resolution—findings.  
 32-2004. Powers of highway authorities.  
 32-2005. Design of controlled access facility—ingress and egress restricted.  
 32-2006. Acquisition of property for facility.  
 32-2007. New and existing facilities—grade crossing eliminations.  
 32-2008. Existing roads and streets as service roads.  
 32-2009. Marking of facility with signs.  
 32-2009.1. Commercial enterprise or structure.  
 32-2010. Violations specified—penalty.

**32-2001. Purpose.** It is the declared policy of this state to facilitate the flow of traffic and promote public safety by controlling access to highways included by the bureau of public roads in the national system of interstate highways.

**History:** En. Sec. 1, Ch. 104, L. 1955.

**Title of Act**

An act to provide for the planning, designation, establishment, use, regulation, alteration, improvement, maintenance, and vacation of controlled-access facilities; the acquisition of lands required therefor; the restriction of intersections

and control of approaches; the establishment of local service roads; the prohibition of certain acts thereon and provision for penalties therefor; repealing all acts and parts of acts in conflict therewith; and providing that this act shall be in full force and effect from and after its passage and approval.

**32-2002. Definitions.** When used in this act:

(a) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(b) "Controlled access highway" means all portions of an interstate highway which the state highway commission shall determine and designate for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that the property abuts upon such highway, or for any other reason, and shall further include those portions of spurs to the interstate highway system which the state highway commission shall determine and designate as unsafe for or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(c) "Controlled access facility" means and includes all streets, alleys, public roads, private roads and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(d) "Existing highway" means and includes all highways, roads and streets heretofore established, constructed and in use. It shall not include new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated.

**History:** En. Sec. 2, Ch. 104, L. 1955; amd. Sec. 1, Ch. 121, L. 1957.

**Amendment**

The 1957 amendment substituted pres-

ent subd. (b) for one which formerly read "(b) 'Controlled access highway' means all portions of an interstate highway which the state highway commission shall

determine and designate as unsafe for and impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage."

**32-2003. Designation as controlled access highway—resolution—findings.** No part or portion of an interstate highway shall be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the owners or occupants of the abutting land or other persons have no easement of access or only a limited easement of access, light, air or view by reason of the fact that their property abuts upon such highway or for any other reason: It is hereby declared that the requirement by the federal government that access be controlled is necessity for the passing of such resolution by the highway authorities; nor shall any part or portion of any interstate, or spurs to the interstate highway system be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the rights of, or easements to access, light, air or view be acquired by the state so as to prevent such part or portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage. Such resolution shall contain a statement of the reasons for the adoption thereof, and shall set forth the location, distance and termini of the portion of the highway designated as a controlled access highway.

**History:** En Sec. 3, Ch. 104, L. 1955; amd. Sec. 2, Ch. 121, L. 1957.

#### **Amendment**

The 1957 amendment substituted that part of this section beginning with the words "it is necessary and/or desirable that the owners \* \* \*" and continuing to the last sentence for the words "traffic

congestion will result from unrestricted access thereto, or that hills, curves, or other conditions with respect to traffic control or public safety render it unsafe to permit unrestricted access thereto." The amendment also deleted the word "interstate" which appeared after the words "portion of the" in the last sentence.

**32-2004. Powers of highway authorities.** The highway authorities of the state, counties, incorporated cities and towns, having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use wherever such authority or authorities shall find and determine the necessity or desirability of such controlled access facilities as defined in this chapter. Provided, that within incorporated cities and towns, and upon county roads within counties, such authority or authorities shall be subject to the consent of the governing body. Said highway authorities of the state, counties, incorporated cities and towns, in addition to the specific powers granted in this act, shall also have and may exercise, relative to controlled access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdic-



tions. Said units may regulate, restrict, or prohibit the use of such controlled access facilities by the various classes of vehicles or traffic.

**History:** En. Sec. 4, Ch. 104, L. 1955; amd. Sec. 3, Ch. 121, L. 1957.

**Amendment**

The 1957 amendment substituted the words "the necessity or desirability of such

controlled access facilities as defined in this chapter" for the words "that traffic conditions will justify such special facilities" which appeared after the word "determine" near the end of the first sentence.

**32-2005. Design of controlled access facility—ingress and egress restricted.** The highway authorities of the state, counties, incorporated cities and towns are authorized to so design any controlled access facility and to so regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended. In this connection such highway authorities are authorized to divide and separate any controlled access facility into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and other devices. No person shall have any rights of ingress or egress to, from or across controlled access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

**History:** En. Sec. 5, Ch. 104, L. 1955.

**32-2006. Acquisition of property for facility.** For the purpose of this act, the highway authorities of the state, counties, incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for controlled access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation, in the same manner as such authorities are now or hereafter may be authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions. A right of way is hereby given, dedicated and set apart for controlled access facilities through, over, upon or across any county road and any street or alley intersecting a controlled access highway, and the acquisition of any such county road, street, or alley for use as a controlled access facility shall be deemed superior and a more necessary public use and purpose than the public use or purpose to which such road, street or alley has theretofore been dedicated.

**History:** En. Sec. 6, Ch. 104, L. 1955.

**32-2007. New and existing facilities—grade crossing eliminations.** The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled access facilities with existing state and county roads, and city or town streets at the right-of-way boundary line of such controlled access facility; and after the establishment of any controlled access facility, no highway or street which is not a part of said facility shall intersect the same at grade. No incorporated city or town street, county or state highway, or other public way shall be opened into or connected with any such controlled access



facility without the consent and previous approval of the highway authority in the state, county, incorporated city or town having jurisdiction over such controlled access facility. Provided, however, that the commission may, whenever it determines that traffic is not thereby impeded and that public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas.

**History:** En. Sec. 7, Ch. 104, L. 1955.

**32-2008. Existing roads and streets as service roads.** In connection with the development of any controlled access facility the state, county, or incorporated city or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled access facilities under the terms of this act, whenever such local service roads are necessary for carrying out any of the provisions of this act. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled access facility proper by means of all devices determined to be necessary in carrying out the provisions of this act.

**History:** En. Sec. 8, Ch. 104, L. 1955.

**32-2009. Marking of facility with signs.** After the opening of any new and additional controlled access facility, or after the designation and establishment of any existing street or highway as included, the particular highways and streets or those portions thereof designated and established, shall be physically marked and indicated by the erection and maintenance of signs indicating to drivers of vehicles that they are entering a controlled access area and that they are leaving a controlled access area.

**History:** En. Sec. 9, Ch. 104, L. 1955.

**32-2009.1. Commercial enterprise or structure.** No commercial enterprise or structure can be constructed or operated on the publicly-owned right of way of, or on any publicly-owned or publicly-leased land used for, or in connection with a controlled-access facility.

**History:** En. 32-2009.1 by Sec. 1, Ch. 134, L. 1959.

#### **Title of Act**

An act to amend Chapter 20, Title 32, of the Revised Codes of Montana, 1947, by adding thereto a new section to be numbered 32-2009.1; providing that no commercial enterprise or structure shall

be constructed, located or operated within the limits of a right of way or a controlled-access facility; and containing a repealing clause.

#### **Repealing Clause**

Section 2 of Ch. 134, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**32-2010. Violations specified—penalty.** After the opening of any new and additional controlled access highway facility, or after the designation and establishment of any existing street or highway as included, it shall be unlawful for any person (1) to drive a vehicle over, upon, or across

any curb, central dividing section, or other separation or dividing line on controlled access facilities; (2) to make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (4) to drive any vehicle into the controlled access facility from a local service road except through an opening provided for that purpose in the dividing curb, or dividing section, or dividing line which separates such service road from the controlled access facility proper. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

**History:** En. Sec. 10, Ch. 104, L. 1955.

#### Separability Clause

Section 11 of Ch. 104, Laws 1955 as amended by Sec. 4 of Ch. 121, Laws 1957 read "Severability. If any section, provision, or clause of this act shall be declared invalid or inapplicable to any person or circumstance, such invalidity or inapplicability shall not be construed to affect the portions not so held or persons or circumstances not so affected. All laws or portions of laws inconsistent with the policy and provisions of this act are hereby repealed to the extent of such inconsistency in its application to controlled access facilities provided for in this act. Provided further that nothing herein contained shall be construed to be in conflict

with any federal aid highway act or any amendments to such acts."

#### Repealing Clauses

Section 12 of Ch. 104, Laws 1955 and Sec. 5 of Ch. 121, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 13 of Ch. 104, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

Section 6 of Ch. 121, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

## CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

Section 32-2101. Definition of words and phrases.

- 32-2102. Definitions—vehicle—motor vehicle—motorcycle—motor-driven cycle—authorized emergency vehicle—school bus—bicycle—special mobile equipment.
- 32-2103. Definitions—truck-tractor—farm tractor—road tractor.
- 32-2104. Definitions—truck—bus—trackless trolley coach.
- 32-2105. Definitions—trailer—semitrailer—pole trailer—house trailer.
- 32-2106. Definitions—pneumatic tire—solid tire—metal tires.
- 32-2107. Definitions—railroad—railroad train.
- 32-2108. Definitions—explosives—flammable liquid.
- 32-2109. Definitions—gross weight.
- 32-2110. Definitions—supervisor—board—commission.
- 32-2111. Definitions—person—pedestrian—driver—owner.
- 32-2112. Police officer or highway patrolman.
- 32-2113. Local authorities.
- 32-2114. Street or highway—private road or driveway—roadway—sidewalk—laned roadway—through highway—controlled-access highway.
- 32-2115. Intersection.
- 32-2116. Crosswalk.
- 32-2117. Safety zone.
- 32-2118. Business district—residence district.
- 32-2119. Official traffic-control devices—traffic-control signal—railroad sign or signal.

## REGULATING TRAFFIC ON HIGHWAYS

- 32-2120. Traffic.
- 32-2121. Right of way.
- 32-2122. Stop—stop, stopping, or standing—park.
- 32-2123. Arterial street—implement of husbandry—urban district.
- 32-2124. Provisions of act refer to vehicles upon the highways—exceptions.
- 32-2124.1. Operation of vehicles across public roads and highways not considered operation on roads, when.
- 32-2124.2. Authority to regulate, license, or tax the fuel extends only to vehicles operated on public roads.
- 32-2125. Required obedience to traffic laws.
- 32-2126. Obedience to police officers and highway patrolmen.
- 32-2127. Public officers and employees to obey act.
- 32-2128. Authorized emergency vehicles.
- 32-2129. Traffic laws apply to persons driving animal-drawn vehicles.
- 32-2130. Provisions of act uniform throughout state.
- 32-2131. Powers of local authorities.
- 32-2132. This act not to interfere with rights of owners of real property with reference thereto.
- 32-2133. State highway commission to adopt sign manual.
- 32-2134. State highway commission to sign all state highways.
- 32-2135. Local traffic-control devices.
- 32-2136. Obedience to and required traffic-control devices.
- 32-2137. Traffic-control signal legend.
- 32-2138. Pedestrian control signals.
- 32-2139. Flashing signals.
- 32-2140. Display of unauthorized signs, signals, or markings.
- 32-2141. Interference with official traffic-control devices or railroad signs or signals.
- 32-2142(1), 32-2142(2). Persons under the influence of intoxicating liquor or of drugs.
- 32-2143. Reckless driving.
- 32-2144. Speed restrictions—basic rule.
- 32-2145. Establishment of state speed zones.
- 32-2146. When local authorities may and shall alter limits.
- 32-2147. Minimum speed regulations.
- 32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers.
- 32-2149. Special speed limitations.
- 32-2150. Charging violations.
- 32-2150.1. Use of radar—evidence admissible.
- 32-2150.2. Arrest without a warrant in radar cases.
- 32-2150.3. Erection of radar signs.
- 32-2151. Drive on right side of roadway—exceptions.
- 32-2152. Passing vehicles proceeding in opposite directions.
- 32-2153. Overtaking a vehicle on the left.
- 32-2154. When overtaking on right is permitted.
- 32-2155. Limitations on overtaking on the left.
- 32-2156. Further limitations on driving to left of center of roadway.
- 32-2157. No-passing zones.
- 32-2158. One-way roadways and rotary traffic islands.
- 32-2159. Driving on roadways laned for traffic.
- 32-2160. Following too closely.
- 32-2161. Driving on divided highways.
- 32-2162. Restricted access.
- 32-2163. Restrictions on use of controlled-access roadway.
- 32-2164. Required position and method of turning at intersections.
- 32-2165. Turning on curve or crest of grade prohibited.
- 32-2166. Starting parked vehicle.
- 32-2167. Turning movements and required signals.
- 32-2168. Signals by hand and arm or signal device.
- 32-2169. Method of giving hand-and-arm signals.
- 32-2170. Vehicle approaching or entering intersection.
- 32-2171. Vehicle turning left at intersection.
- 32-2172. Vehicle entering through highway or stop intersection.
- 32-2173. Vehicle entering highway from private road or driveway.
- 32-2174. Vehicles approaching "Yield Right-of-Way" sign.
- 32-2175. Operation of vehicles on approach of authorized emergency vehicles.
- 32-2176. Pedestrians subject to traffic regulations.



## HIGHWAYS, BRIDGES AND FERRIES

- 32-2177. Pedestrians' right of way in crosswalk.
- 32-2178. Crossing at other than crosswalks.
- 32-2179. Drivers to exercise due care.
- 32-2180. Pedestrians to use right half of crosswalk.
- 32-2181. Pedestrians on roadways.
- 32-2182. Pedestrian soliciting rides or business.
- 32-2183. Intoxicated pedestrian.
- 32-2184. Effect of regulations.
- 32-2185. Traffic laws apply to persons riding bicycles.
- 32-2186. Riding on bicycles.
- 32-2187. Clinging to vehicles.
- 32-2188. Riding on roadways and bicycle paths.
- 32-2189. Carrying articles.
- 32-2190. Lamps and other equipment on bicycles.
- 32-2191. Obedience to signal indicating approach of train.
- 32-2192. All vehicles must stop at certain railroad grade crossings.
- 32-2193. Certain vehicles must stop at all railroad grade crossings.
- 32-2194. Moving heavy equipment at railroad grade crossings.
- 32-2195. Vehicles must stop at stop signs.
- 32-2196. Stop before emerging from alley, driveway, or building.
- 32-2197. Overtaking and passing school bus.
- 32-2198. Special lighting equipment on school busses.
- 32-2199. Stopping, standing, or parking outside of business or residence districts.
- 32-21-100. Officers or highway patrolmen authorized to remove illegally stopped vehicles.
- 32-21-101. Stopping, standing, or parking prohibited in specified places.
- 32-21-102. Additional parking regulations.
- 32-21-103. Unattended motor vehicles.
- 32-21-104. Limitations on backing.
- 32-21-105. Riding on motorcycles.
- 32-21-106. Obstruction to driver's view or driving mechanism.
- 32-21-107. Driving on mountain highways.
- 32-21-108. Coasting prohibited.
- 32-21-109. Following fire apparatus prohibited.
- 32-21-110. Crossing fire hose.
- 32-21-111. Putting glass, etc., on highway prohibited.
- 32-21-112. Riding on fenders or running boards prohibited.
- 32-21-112.1. Riding in house trailers.
- 32-21-112.2. Opening and closing vehicle doors.
- 32-21-113. Shooting from or across highway.
- 32-21-114. Scope and effect of regulations.
- 32-21-115. When lighted lamps are required.
- 32-21-116. Visibility distance and mounted height of lamps.
- 32-21-117. Head lamps on motor vehicles.
- 32-21-118. Tail lamps.
- 32-21-119. New motor vehicles to be equipped with reflectors.
- 32-21-120. Stop lamps and turn signals required on new motor vehicles.
- 32-21-121. Application of succeeding sections.
- 32-21-122. Additional equipment required on certain vehicles.
- 32-21-123. Color of clearance lamps, side marker lamps, reflectors and back-up lamps.
- 32-21-124. Mounting of reflectors, clearance lamps, and side marker lamps.
- 32-21-125. Visibility of reflectors, clearance lamps, and marker lamps.
- 32-21-126. Obstructed lights not required.
- 32-21-127. Lamp or flag on projecting load.
- 32-21-128. Lamps on parked vehicles.
- 32-21-129. Lamps on farm tractors, farm equipment, and implements of husbandry.
- 32-21-130. Lamps on other vehicles and equipment.
- 32-21-131. Spot lamps and auxiliary lamps.
- 32-21-132. Audible and visual signals on vehicles.
- 32-21-133. Signal lamps and signal devices.
- 32-21-134. Additional lighting equipment.
- 32-21-135. Multiple-beam road-lighting equipment.
- 32-21-136. Use of multiple-beam road-lighting equipment.
- 32-21-137. Single-beam road-lighting equipment.
- 32-21-138. Lighting equipment on motor-driven cycles.



- 32-21-139. Alternate road-lighting equipment.
- 32-21-140. Number of driving lamps required or permitted.
- 32-21-141. Special restrictions on lamps.
- 32-21-141.1. Blinker-type red light on fireman's private vehicle—use—identification card.
- 32-21-141.2. Violation—misdemeanor.
- 32-21-142. Standards for lights on snow-removal equipment.
- 32-21-143. Brakes.
- 32-21-144. Brakes on motor-driven cycles.
- 32-21-145. Horns and warning devices.
- 32-21-146. Mufflers, prevention of noise.
- 32-21-147. Mirrors.
- 32-21-148. Windshields must be unobstructed and equipped with wipers.
- 32-21-149. Restrictions as to tire equipment.
- 32-21-150. Safety glazing material in motor vehicles.
- 32-21-151. Certain vehicles to carry flares or other warning devices.
- 32-21-152. Display of warning devices when vehicle disabled.
- 32-21-153. Vehicles transporting explosives.
- 32-21-154. Vehicles without required equipment or in unsafe condition.
- 32-21-155. Inspections by officers of the department.
- 32-21-156. Owners and drivers to comply with inspection laws.
- 32-21-157. Penalties for misdemeanor.
- 32-21-158. Uniformity of interpretation.
- 32-21-159. Short title.
- 32-21-160. Constitutionality.
- 32-21-161. Commercial tow car requirements.
- 32-21-162. Penalty.
- 32-21-163. Unlawful operation by child under eighteen—exclusive jurisdiction of district court—penalties—impounding of vehicle, when.
- 32-21-164. Summons—issuing to child under eighteen.
- 32-21-165. Court learning of unlawful operation by child under eighteen—authority.

**32-2101. Definition of words and phrases.** The following words and phrases when used in this act shall, for the purpose of this act, have meanings respectively ascribed to them in this article [32-2101 to 32-2123].

**History:** En. Sec. 1, Ch. 263, L. 1955.

#### Compiler's Note

Sections 32-2101 to 32-2123 comprised Article I of Ch. 263, Laws 1955 entitled "Words and Phrases Defined."

#### Title of Act

An act regulating traffic and the operation of vehicles upon the public highways of the state of Montana, to make uniform the laws relating thereto and to be known as The Montana Uniform Act Regulating Traffic on the Highways; defining certain terms used in the act; defining the power of local authorities to enact or enforce ordinances, rules, or regulations in regard to matters embraced within the provisions of this act; establishing rules of the road, and providing for the obedience to and effect of traffic laws, exceptions thereto, and defining the duties and obligations of authorized emergency vehicles; providing for obedience to traffic signs, signals, and markings and required traffic-control devices; providing for driving vehicles on the right side of roadway—overtaking and passing, and the limitations thereon, and establishment of no-passing zones, and restrictions on the use

of controlled access roadways; providing for the right of way for vehicles approaching or entering intersections, turning left at intersections, entering through highway or stop intersection, or from private road or driveway; providing for pedestrians' rights and duties and providing that drivers exercise due care; prohibiting pedestrians from soliciting rides or business; providing for turning and starting vehicles and signals to be given on stopping and turning; requiring special stops and obedience to signals on approach of train; and providing that vehicles stop at railroad grade crossings and providing for moving heavy equipment at railroad grade crossings and providing that a driver of a vehicle emerging from an alley, driveway, or building must stop; defining the duties of a driver of a vehicle on overtaking and passing school bus; establishing speed restrictions, limitations of speed, and speed zones; defining certain crimes in the use and operation of vehicles and fixing penalties; regulations on stopping, standing and parking of vehicles and providing for additional parking regulations; providing for miscellaneous rules on unattended motor vehicles; regulating riding on motorcycles,

regulations on backing, obstruction to driver's view or driving mechanism, driving on mountain highways; prohibiting following fire apparatus, crossing fire hose; prohibiting the deposit of certain materials on the highways; providing for the operation of bicycles and play vehicles on the highway; providing for vehicle's equipment and devices and inspection thereof; defining and regulating the lighting equipment, brakes and other vehicular devices on motor vehicles and other vehicles while traveling on the public highways; providing for revocation of operators' and chauffeurs' licenses upon the conviction of certain crimes and providing that upon application to the Montana highway patrol board by operators or chauffeurs who have had their licenses revoked and upon proper showing on the part of the said applicant the board may issue restricted licenses; providing for en-

forcement; providing for uniformity of interpretation; providing that if part of this act be held unconstitutional it shall not affect remaining parts of act; repealing sections 31-107, Revised Codes of Montana, 1947, as amended by section 1, chapter 94, Laws of 1949, 31-108 Revised Codes of Montana, 1947, as amended by section 1, chapter 118, Laws of 1949, 31-109, 32-801, 32-802, 32-803, 32-804, 32-805, 32-806, 32-1011, 32-1015, 32-1017, 32-1101, 32-1102, 32-1103, Revised Codes of Montana, 1947, as amended by section 1, chapter 70, Laws of 1949, 32-1104, 32-1105, 32-1106, 32-1107, 32-1108, 32-1109, 32-1111, 32-1132, 32-1133, 32-1134, 32-1135, 32-1136, 32-1137, 32-1138, 32-1139, 32-1140, 32-1141, 32-1142, 32-1146, 32-1611, 32-1612, 69-1913, 69-1915, Revised Codes of Montana, 1947; repealing all acts and parts of acts in conflict therewith; and providing effective date of act.

**32-2102. Definitions — vehicle — motor vehicle — motorcycle — motor-driven cycle—authorized emergency vehicle—school bus—bicycle—special mobile equipment.** (a) Vehicle. Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(b) Motor Vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

(d) Motor-Driven Cycle. Every motorcycle, including every motor scooter, with a motor which produces not to exceed five (5) horsepower, and every bicycle with motor attached.

(e) Authorized Emergency Vehicle. Vehicles of the fire department, fire patrol, police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations or of persons as are designated or authorized by the board.

(f) School Bus. Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(g) Bicycle. Every device propelled by human power upon which any person may ride, having two (2) tandem wheels either of which is more than twenty (20) inches in diameter.

(h) Special Mobile Equipment. Every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers. The foregoing enumeration shall be

deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section.

**History:** En. Sec. 2, Ch. 263, L. 1955.

Laws 1955 entitled "Vehicles and Equipment Defined."

**Compiler's Note**

Sections 32-2102 to 32-2109 comprised  
Subdivision I of Article I of Ch. 263,

**32-2103. Definitions—truck-tractor—farm tractor—road tractor.** (a) Truck-tractor. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(b) Farm Tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(c) Road Tractor. Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

**History:** En. Sec. 3, Ch. 263, L. 1955.

**32-2104. Definitions—truck—bus—trackless trolley coach.** (a) Truck. Every motor vehicle designed, used, or maintained primarily for the transportation of property.

(b) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(c) Trackless Trolley Coach. Every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

**History:** En. Sec. 4, Ch. 263, L. 1955.

**32-2105. Definitions—trailer—semitrailer—pole trailer—house trailer.** (a) Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(b) Semitrailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(c) Pole Trailer. Every vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(d) House Trailer. A trailer or a semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place



(either permanently or temporarily) and is equipped for use as a conveyance on streets and highways, or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined above, but which is used permanently or temporarily for the advertising, sales, display or promotion of merchandise or services, or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

**History:** En. Sec. 5, Ch. 263, L. 1955; subd. (a) and subd. (b) and added subd. amd. Sec. 1, Ch. 204, L. 1957. (d).

#### Amendment

The 1957 amendment deleted the words "persons or" which appeared between the words "carrying" and "property" in both

#### Repealing Clause

Section 2 of Ch. 204, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**32-2106. Definitions—pneumatic tire—solid tire—metal tires.** (a) Pneumatic Tire. Every tire in which compressed air is designed to support the load.

(b) Solid Tire. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(c) Metal Tires. Every tire the surface of which in contact with the highway is wholly or partly metal or other hard nonresilient material.

**History:** En. Sec. 6, Ch. 263, L. 1955.

**32-2107. Definitions—railroad—railroad train.** (a) Railroad. A carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(b) Railroad Train. A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

**History:** En. Sec. 7, Ch. 263, L. 1955.

**32-2108. Definitions — explosives — flammable liquid.** (a) Explosives. Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(b) Flammable Liquid. Any liquid which has a flash point of seventy (70) degrees F., or less, as determined by a tagliabue or equivalent closed cup test device.

**History:** En. Sec. 8, Ch. 263, L. 1955.

**32-2109. Definitions—gross weight.** Gross Weight. The weight of a vehicle without load plus the weight of any load thereon.

**History:** En. Sec. 9, Ch. 263, L. 1955.

**32-2110. Definitions—supervisor—board—commission.** (a) Supervisor. The supervisor of the Montana highway patrol of this state.



(b) Board. The Montana highway patrol board of this state acting directly or through its duly authorized officers and agents.

(c) Commission. The state highway commission of Montana.

**History:** En. Sec. 10, Ch. 263, L. 1955. Laws 1955 entitled "Governmental Agencies, Persons, Owners, etc., Defined."

**Compiler's Note**

Sections 32-2110 to 32-2113 comprised  
Subdivision II of Article I of Ch. 263,

**32-2111. Definitions—person—pedestrian—driver—owner.** (a) Person. Every natural person, firm, copartnership, association, or corporation.

(b) Pedestrian. Any person afoot.

(c) Driver. Every person who drives or is in actual physical control of a vehicle.

(d) Owner. A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this act.

**History:** En. Sec. 11, Ch. 263, L. 1955.

**32-2112. Police officer or highway patrolman.** Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

**History:** En. Sec. 12, Ch. 263, L. 1955.

**32-2113. Local authorities.** Every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

**History:** En. Sec. 13, Ch. 263, L. 1955.

**32-2114. Street or highway—private road or driveway—roadway—sidewalk—laned roadway—through highway—controlled-access highway.** (a) Street or Highway. The entire width between the boundary lines of every street, highway and related structure as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain.

(b) Private Road or Driveway. Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(c) Roadway. That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two (2) or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(d) Sidewalk. That portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

(e) **Laned Roadway.** A roadway which is divided into two (2) or more clearly marked lanes for vehicular traffic.

(f) **Through Highway.** Every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this act.

(g) **Controlled-access Highway.** Every highway, street, or roadway, in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

**History:** En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959.

#### **Amendment**

The 1959 amendment substituted present subd. (a) for one that read "The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for the purpose of vehicular travel."

#### **Compiler's Note**

Sections 32-2114 to 32-2123 comprised Subdivision III of Article I of Ch. 263, Laws 1955 entitled "Highways, Restricted Districts, Zones, etc., Defined."

**32-2115. Intersection.** (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection.

**History:** En. Sec. 15, Ch. 263, L. 1955.

**32-2116. Crosswalk.** (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

**History:** En. Sec. 16, Ch. 263, L. 1955.

**32-2117. Safety zone.** The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

**History:** En. Sec. 17, Ch. 263, L. 1955.

**32-2118. Business district—residence district.** (a) **Business District.** The territory contiguous to and including a highway when within any six hundred (600) feet along such highway there are buildings in use for busi-

ness or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred (300) feet of frontage on one (1) side or three hundred (300) feet collectively on both sides of the highway.

(b) Residence District. The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred (300) feet or more is in the main improved with residences or residences and buildings in use for business.

**History:** En. Sec. 18, Ch. 263, L. 1955.

**32-2119. Official traffic-control devices—traffic-control signal—railroad sign or signal.** (a) Official Traffic-control Devices. All signs, signals, markings, and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(b) Traffic-control Signal. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(c) Railroad Sign or Signal. Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

**History:** En. Sec. 19, Ch. 263, L. 1955.

**32-2120. Traffic.** Pedestrians, ridden or herded animals, vehicles, street-cars, and other conveyances either singly or together while using any highways for purposes of travel.

**History:** En. Sec. 20, Ch. 263, L. 1955.

**32-2121. Right of way.** The privilege of the immediate use of the roadway.

**History:** En. Sec. 21, Ch. 263, L. 1955.

**32-2122. Stop—stop, stopping, or standing—park.** (a) Stop. When required means complete cessation from movement.

(b) Stop, Stopping, or Standing. When prohibited means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrolman, or traffic-control sign or signal.

(c) Park. When prohibited means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

**History:** En. Sec. 21.1, Ch. 263, L. 1955.

**32-2123. Arterial street—implement of husbandry—urban district.** (a) Arterial Street. Any U. S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system or highway.

(b) Implement of Husbandry. Every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations.



(c) Urban District. The territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred (100) feet for a distance of a quarter ( $\frac{1}{4}$ ) of a mile or more.

**History:** En. Sec. 21.2, Ch. 263, L. 1955.

**32-2124. Provisions of act refer to vehicles upon the highways—exceptions.** The provisions of this act relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of Article IV [32-2142, 32-2143] of this act and chapter 12, Title 32, Revised Codes of Montana, 1947, shall apply upon highways and elsewhere throughout the state.

**History:** En. Sec. 22, Ch. 263, L. 1955. "Obedience to and Effect of Traffic Laws."

**Compiler's Note**

Sections 32-2124 to 32-2132 comprised Article II of Ch. 263, Laws 1955 entitled

**32-2124.1. Operation of vehicles across public roads and highways not considered operation on roads, when.** The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state; provided, that such crossings are adequately marked with such warning signs or devices, and are subject to relating to stopping before entry, and to restoration of any damage, as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

**History:** En. Sec. 4, Ch. 247, L. 1959.

**Title of Act**

An act to amend section 32-103 of the Revised Codes of Montana, 1947, defining public highways, to provide for certain changes in the definition; to amend section 32-2114 of the Revised Codes of Montana, 1947, enacted as section 14, Chapter 263 of the Montana Session Laws of 1955, defining street or highway, to

provide changes in definition; to amend section 84-1831 of the Revised Codes of Montana, 1947, enacted as section 2, Chapter 162 of the Montana Session Laws of 1955, relating to definitions for the purpose of special fuel tax; to establish the policy of the state of Montana in the regulation, licensing and taxation of fuel used in motor vehicles operated in the state; and containing a repealing clause.

**32-2124.2. Authority to regulate, license, or tax the fuel extends only to vehicles operated on public roads.** The authority to regulate motor vehicles, to license the same, or to tax the fuel used therein, under the provisions of any statutes of the state of Montana, shall only be exercised as to vehicles operated on the public roads and highways of this state.

**History:** En. Sec. 5, Ch. 247, L. 1959.

**Repealing Clause**

Section 6 of Ch. 247, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**32-2125. Required obedience to traffic laws.** It is unlawful and, unless otherwise declared in this act with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this act.

**History:** En. Sec. 23, Ch. 263, L. 1955.



**32-2126. Obedience to police officers and highway patrolmen.** No person shall wilfully fail or refuse to comply with any lawful order or direction of any police officer or highway patrolman pertaining to the use of the highways by traffic.

**History:** En. Sec. 24, Ch. 263, L. 1955.

**32-2127. Public officers and employees to obey act.** (a) The provisions of this act applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, or town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this act with reference to authorized emergency vehicles.

(b) **Persons Working on Highways—Exceptions.** Unless specifically made applicable, the provisions of this chapter except those contained in Article IX [32-2176 to 32-2183] hereof shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

**History:** En Sec. 25, Ch. 263, L. 1955.

**32-2128. Authorized emergency vehicles.** (a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

1. Park or stand, irrespective of the provisions of this act;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the speed limits so long as he does not endanger life or property;
4. Disregard regulations governing direction of movement or turning in specified directions.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of section 129 [32-21-132] of this act, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

**History:** En. Sec. 25.1, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 169, L. 1957.

**Amendment**

The 1957 amendment substituted "section 129" for "section 131" in subd. (c).

**32-2129. Traffic laws apply to persons driving animal-drawn vehicles.** Every person driving an animal-drawn vehicle upon a roadway shall be

granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this act, except those provisions of this act which by their very nature can have no application.

History: En. Sec. 26, Ch. 263, L. 1955.

**32-2130. Provisions of act uniform throughout state.** The provisions of this act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulations in conflict with the provisions of this act unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this act.

History: En. Sec. 27, Ch. 263, L. 1955;      Amendment  
amd. Sec. 1, Ch. 201, L. 1957.

The 1957 amendment made no change in this section.

**32-2131. Powers of local authorities.** (a) The provisions of this act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles;
2. Regulating the traffic by means of police officers or traffic-control devices;
3. Regulating or prohibiting processions or assemblages on the highways;
4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one (1) specific direction;
5. Regulating the speed of vehicles in public parks;
6. Designating any highway as a through highway and requiring that all the vehicles stop before entering or crossing the same, designating any intersection as a stop intersection, and requiring all vehicles to stop at one or more entrances to such intersections;
7. Restricting the use of highways as authorized in section 32-1128, Revised Codes of Montana, 1947;
8. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;
9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;
10. Altering the speed limits as authorized herein;
11. Regulating the driving of vehicles by any person who is an habitual user of, or under the influence of, any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle within the incorporated limits of any city or town.
12. Regulating or prohibiting any person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the incorporated limits of any city or town.
13. Regulating or prohibiting the driving of vehicles by any person in a willful or wanton disregard for the safety of persons or property within the incorporated limits of any city or town.

14. Enacting as ordinances any and all provisions of this act and any and all other acts regulating traffic, pedestrians, vehicles and operators thereof, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction.

**History:** En. Sec. 28, Ch. 263, L. 1955; amd. Sec. 2, Ch. 201, L. 1957; amd. Sec. 1, Ch. 240, L. 1959.

#### Amendments

The 1957 amendment inserted new subsecs. 11 to 13 under subd. (a) and renumbered former subsec. 11 as subsec. 14. The 1957 amendment also deleted two former subds. (b) and (c) which read "(b) No local authority shall erect or maintain any stop sign or traffic control signal at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state highway commission.

"(c) No ordinance or regulation enacted under subdivisions (4), (5), (6), (7) or (10) of section 28(a) shall be effective until

signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate."

The 1959 amendment substituted present subd. (14) for one that read "Adopting such other traffic regulations as are specifically authorized by this act."

#### Repealing Clause

Section 2 of Ch. 240, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 240, Laws 1959, provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

**32-2132. This act not to interfere with rights of owners of real property with reference thereto.** Nothing in this act shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this act, or otherwise regulating such use as may seem best to such owner.

**History:** En. Sec. 29, Ch. 263, L. 1955.

**32-2133. State highway commission to adopt sign manual.** The state highway commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this act for use upon highways within the state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials, provided however, that the commission shall adopt for use on controlled-access highways, the interstate sign manual as adopted by the American association of state highway officials, February 10, 1958, and approved by the United States department of commerce, bureau of public roads, February 21, 1958, and all subsequent amendments relating thereto.

**History:** En. Sec. 30, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1959.

#### Amendment

The 1959 amendment added the proviso in the last sentence of this section.

#### Compiler's Note

Sections 32-2133 to 32-2141 comprised Article III of Ch. 263, Laws 1955 entitled "Traffic Signs, Signals, and Markings."

**32-2134. State highway commission to sign all state highways.** (a) The state highway commission shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all state



highways as it shall deem necessary to indicate and to carry out the provisions of this act or to regulate, warn, or guide traffic.

(b) No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the state highway commission except by the latter's permission.

(c) The commission only shall erect, place and maintain such traffic-control devices conforming to its manual and specifications upon any controlled-access highway or controlled-access facility. The erection of any sign, marker, or emblem upon a controlled-access facility or controlled-access highway by any other public authority, or agent, or by any private individual, firm or corporation is forbidden and is hereby declared to be a misdemeanor and punished as provided in section "E" [subsec. (e)].

(d) The erection, placement, or maintenance of any sign, marker, emblem or traffic-control device upon any state highway except a controlled-access highway or controlled-access facility, shall be subject to the rules, regulations and specifications as the commission shall adopt and publish in the interest of public safety and convenience.

(e) The erection of any sign, emblem, marker or traffic-control device in violation of this section shall be a misdemeanor and upon conviction, punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00).

(f) Every such unauthorized sign, emblem, marker or traffic-control device or portion thereof encroaching into, over, or upon a right of way of any state highway, or controlled-access highway is hereby declared to be a public nuisance, and the highway commission is hereby empowered to remove the same or cause it to be removed without notice and without liability for such removal.

**History:** En. Sec. 31, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 224, L. 1959.

**Repealing Clause**

Section 2 of Ch. 224, Laws of 1959 repealed all acts or parts of acts in conflict therewith.

**Amendment**

The 1959 amendment added subds. (c) to (f).

**32-2135. Local traffic-control devices.** (a) Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this act or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

**History:** En. Sec. 32, Ch. 263, L. 1955.

**32-2136. Obedience to and required traffic-control devices.** (a) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this act, unless otherwise directed by a highway patrolman or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this act.

(b) No provision of this act for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to



be seen by an ordinarily observant person. Whenever a particular section does not state the signs are required, such section shall be effective even though no signs are erected or in place.

**History:** En. Sec. 33, Ch. 263, L. 1955.

**32-2137. Traffic-control signal legend.** Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green Alone or "Go":

1. Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection of an adjacent crosswalk at the time such signal is exhibited.

2. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) Yellow Alone or "Caution" When Shown Following the Green or "Go" Signal:

1. Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

2. Pedestrians facing such signals are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.

(c) Red Alone or "Stop":

1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) Red with Green Arrow:

1. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(e) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

**History:** En. Sec. 34, Ch. 263, L. 1955.

**32-2138. Pedestrian control signals.** Whenever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" are in place such signals shall indicate as follows:

(a) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles.

(b) Wait or Don't Walk. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

**History:** En. Sec. 35, Ch. 263, L. 1955.

**32-2139. Flashing signals.** (a) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

1. Flashing Red (stop signal). (a) When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in section 88 [32-2191] of this act.

2. Flashing Yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

**History:** En. Sec. 36, Ch. 263, L. 1955;  
amd. Sec. 2, Ch. 169, L. 1957.

**Amendment**

The 1957 amendment substituted "section 88" for "section 89" in subd. (b).

**32-2140. Display of unauthorized signs, signals, or markings.** (a) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign, or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(b) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(c) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(d) The prohibition of this section shall not apply to portable "Caution" signs placed in the vicinity of schools at those times during which school children are going to and coming from school.

(e) Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the high-

way is hereby empowered to remove the same or cause it to be removed without notice.

History: En. Sec. 37, Ch. 263, L. 1955.

**32-2141. Interference with official traffic-control devices or railroad signs or signals.** No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

History: En. Sec. 38, Ch. 263, L. 1955.

**32-2142(1). Persons under the influence of intoxicating liquor or of drugs.** (a) It is unlawful and punishable as provided in paragraph (c) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this state.

(b) It is unlawful and punishable as provided in paragraph (c) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this paragraph.

(c) Every person who is convicted of a violation of this section will be punished by imprisonment for not more than six (6) months, or by fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by both such fine and imprisonment. On a second or subsequent conviction he shall be punished by imprisonment for not less than thirty (30) days nor more than one (1) year, or in the discretion of the court, a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00), or by both such fine and imprisonment.

(d) Each and every municipality in this state is hereby given authority to enact the foregoing paragraphs (a), (b) and (c) of this section, with the word "state" in the first sentence of paragraph (b) changed in each instance to read "municipality," as an ordinance, and is hereby given jurisdiction of the enforcement of said ordinance, and of the imposition of the fines and penalties therein provided.

The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person convicted under this section or under any ordinance enacted pursuant to the authority of this section; providing, however, that the board shall have the authority after such revocation upon proper application and proper showing made to the board by the party whose license has been revoked to issue to said party a restricted operator's or chauffeur's license allowing the said party to drive a motor vehicle to and from and in the course of his business only, and such restricted license shall remain in effect at the will of said board.



History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 3, Ch. 201, L. 1957.

#### Compiler's Notes

Section 32-2142 was amended twice in the 1957 Session. Once by section 3 of Ch. 201, Laws 1957, effective March 9, 1957 and once by section 1 of Ch. 194, Laws 1957, effective July 1, 1957. Neither chapter mentioned nor contained the changes by the other chapter but each amended the section in different particulars. The amendments do not seem to conflict with each other and both would be effective if not in conflict. The section as set out above is the one as amended by Ch. 201. The section as amended by Ch. 194 is set out as 32-2142(2).

Sections 32-2142 and 32-2143 comprised Article IV of Ch. 263, Laws 1955 entitled "Driving While Intoxicated, and Reckless Driving."

#### Amendment

\*The 1957 amended added subd. (d) and in the last paragraph inserted the words "or under any ordinance enacted pursuant to the authority of this section" which appear immediately preceding the proviso clause.

**32-2142(2). Persons under the influence of intoxicating liquor or of drugs.** (a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.

(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor:

2. If there was at that time in excess of 0.05 per cent but less than 0.15 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant:

3. If there was at that time 0.15 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor:

4. The foregoing provisions of paragraph (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

#### Subd. (a)

#### Operation and Effect

By defining the words "actual," "physical," and "control" as they are used in their ordinary meanings, it was held that if a person has existing or present bodily restraint, directing influence, domination or regulation of an automobile while under the influence of intoxicant he violates the statute. *State v. Ruona*, 133 M 243, 321 P 2d 615, 618.

Movement of the vehicle is unnecessary to charge an offense under this provision. *State v. Rouna*, 133 M 243, 321 P 2d 615, 618.

#### Validity

The term "actual physical control" as used in this section is not so vague, ambiguous, and uncertain as to render the statute void. *State v. Rouna*, 133 M 243, 321 P 2d 615.

#### References

Cited in *State ex rel. Aho v. Justice Court of Laurel Township*, 131 M 585, 313 P 2d 542.



(c) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive a motor vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such a drug under the laws of this state shall not constitute a defense against any charge of violating this paragraph.

(d) Every person who is convicted of a violation of this section shall be punished by imprisonment in the county or city jail for not more than six (6) months or by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by both such fine and imprisonment. On a second conviction he shall be punished by imprisonment in the county or city jail for not less than ten (10) days nor more than six (6) months, to which may be added, at the discretion of the court a fine of not less than three hundred dollars (\$300.00) nor more than five hundred dollars (\$500.00). On the third or subsequent conviction he shall be punished by imprisonment for a term of not less than thirty (30) days nor more than one (1) year, to which may be added at the discretion of the court a fine of not less than five hundred [dollars] (\$500.00) nor more than one thousand dollars (\$1,000.00).

The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person convicted under this section; providing, however, that the board shall have the authority after such revocation upon proper application and proper showing made to the board by the party whose license has been revoked to issue to said party a restricted operator's or chauffeur's license allowing the said party to drive a motor vehicle to and from and in the course of his business only, and such restricted license shall remain in effect at the will of said board.

**History:** En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957.

#### Compiler's Note

Section 32-2142 was amended twice in the 1957 Session. Once by section 3 of Ch. 201, Laws 1957, effective March 9, 1957 and once by section 1 of Ch. 194, Laws 1957, effective July 1, 1957. Neither chapter mentioned nor contained the changes by the other chapter but each amended the section in different particulars. The amendments do not seem to conflict with each other, and both would be good if they are not in conflict. The section as set out above is the one as amended by Ch. 194. The section as amended by Ch. 201 is set out as 32-2142(1).

#### Amendment

The 1957 amendment in subd. (a) inserted the word "motor" and substituted "upon the highways of" for "within"; added subd.(b) renumbering former subds. (b) and (c) as (c) and (d); inserted the word "motor" each time it appears in

subd. (c); inserted the word "a" after the words "entitled to use such" in that subdivision; and made numerous changes in subd. (d), formerly it read: "Every person who is convicted of a violation of this section will be punished by imprisonment for not more than six (6) months, or by fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by both such fine and imprisonment. On a second or subsequent conviction he shall be punished by imprisonment for not less than thirty (30) days nor more than one (1) year, or in the discretion of the court, a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00), or by both such fine and imprisonment."

#### Repealing Clause

Section 2 of Ch. 194, Laws 1957 repealed all acts or parts of acts in conflict therewith.

#### Separability Clause

Section 3 of Ch. 194, Laws 1957 read

"If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

#### Effective Date

Section 4 of Ch. 194, Laws 1957 provided the act should be in full force and effect from and after July 1, 1957.

#### Blood Test

Under information charging driver of death car with manslaughter, blood test taken from defendant soon after his arrival at hospital pursuant to his written consent, which was transmitted to state board of health, analyzed and showed an alcohol concentration of 0.13 per cent, was admissible in evidence as was the testimony of chemist of state board of health that the percentage of alcohol concentration was high enough to indicate that defendant was under the influence of intoxicating liquor at the time his car hit garage. *State v. Haley*, 132 M 366, 318 P 2d 1084, 1087.

**32-2143. Reckless driving.** (a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not more than ninety (90) days, or by fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by both such fine and imprisonment.

(c) Each and every municipality in this state is hereby given authority to enact the foregoing paragraphs (a) and (b) of this section as an ordinance, and is hereby given jurisdiction of the enforcement of said ordinance and of the imposition of the fines and penalties therein provided.

**History:** En. Sec. 40, Ch. 263, L. 1955, amd. Sec. 4, Ch. 201, L. 1957.

all acts and parts of acts in conflict therewith.

#### Amendment

The 1957 amendment added subd. (c).

#### Repealing Clause

Section 5 of Ch. 201, Laws 1957 repealed

#### Effective Date

Section 6 of Ch. 201, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

**32-2144. Speed restrictions—basic rule.** (a) Every person operating or driving a vehicle of any character on a public highway of this state shall drive the same in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and so as not to unduly or unreasonably endanger the life, limb, property, or other rights of any person entitled to the use of the street or highway.

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized, shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful:

1. Twenty-five (25) miles per hour in any urban district;
2. Thirty-five (35) miles per hour on any highways under construction or repairs;
3. Fifty-five (55) miles per hour in such other locations during the nighttime;

Daytime means from a half ( $\frac{1}{2}$ ) hour before sunrise to a half ( $\frac{1}{2}$ ) hour after sunset. Nighttime means at any other hour.

The speed limits set forth in this section may be altered as authorized in sections 42 and 43 [32-2145 and 32-2146].

(c) The driver of every vehicle shall, consistent with the requirements of paragraph (a), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition.

**History:** En. Sec. 41, Ch. 263, L. 1955.

#### Passenger Carriers

#### Compiler's Note

Sections 32-2144 to 32-2150 comprised Article V of Ch. 263, Laws 1955 entitled "Speed Restrictions."

Although carrier of persons for hire must exercise the highest degree of care, it is not an insurer of passenger's safety. *Wilson v. Northland Greyhound Lines, Inc.*, 166 F Supp 667, 669.

**32-2145. Establishment of state speed zones.** Whenever the board shall determine upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, said board may determine and declare a reasonable and safe speed limit thereat which when appropriate signs giving notice thereof are erected shall be effective at all times or during hours of daylight or darkness or at such other times as may be determined at such intersections or other place or part of the highway. This act is not in any way to be construed as authority to set a state-wide speed limit.

**History:** En. Sec. 42, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1959.

#### Amendment

The 1959 amendment added the last sentence.

**32-2146. When local authorities may and shall alter limits.** (a) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the speed permitted under this act is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe limit thereon which:

1. Decreases the limit at intersection; or
2. Increases the limit within an urban district but not to more than fifty-five (55) miles per hour during nighttime; or
3. Decreases the limit outside an urban district, but not to less than thirty-five (35) miles per hour.

(b) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall declare a reasonable and safe limit thereon which



may be greater or less than the speed permitted under this act for an urban district.

(c) Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

(d) Any alteration of speed limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commission.

**History:** En. Sec. 43, Ch. 263, L. 1955.

**32-2147. Minimum speed regulations.** (a) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

Police officers or highway patrolmen are hereby authorized to enforce this provision by directions to drivers, and in the event of apparent willful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith the continued slow operation by a driver shall be a misdemeanor, except that inability to comply with such order will not be construed as willful disobedience.

(b) Whenever the board or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the board or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

**History:** En. Sec. 44, Ch. 263, L. 1955.

**32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers.** (a) No person shall operate any truck or truck-tractor the gross weight of which exceeds six thousand (6,000) pounds at a speed greater than fifty (50) miles per hour.

(b) No person shall operate any motor-driven cycle at any time mentioned in section 112, chapter 263, Laws of 1955 [32-21-115], at a speed greater than thirty-five (35) miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred (300) feet ahead.

(c) No person shall operate a vehicle which is towing a house trailer at a speed greater than a maximum of fifty (50) miles per hour.

**History:** En. Sec. 45, Ch. 263, L. 1955; pounds to 6,000 pounds and the speed from  
amd. Sec. 1, Ch. 241, L. 1957. 45 miles to 50 miles and added subd. (c).

#### **Amendment**

The 1957 amendment in subd. (a) increased the gross weight from 4,000

#### **Repealing Clause**

Section 2 of Ch. 241, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**32-2149. Special speed limitations.** (a) No person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten (10) miles per hour.



(b) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(c) The board upon request from any local authority may, or upon its own initiative shall, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this act, the board shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of not less than one hundred (100) feet before each end of such structure.

(d) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said board and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

**History:** En. Sec. 46, Ch. 263, L. 1955.

**32-2150. Charging violations.** In every charge of violation of any speed regulation in this act the complaint, also the summons, or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed applicable within the district or at the location.

**History:** En. Sec. 47, Ch. 263, L. 1955.

**32-2150.1. Use of radar—evidence admissible.** The speed of any motor vehicle may be measured by the use of radiomicro waves or other electrical device. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue.

**History:** En. Sec. 1, Ch. 120, L. 1959.

#### **Title of Act**

An act relating to the use of radiomicro waves or other electrical devices to detect speed of vehicles being operated upon the public highways of the state of Montana; providing that the speed of vehicles may be measured by use of radiomicro or other electrical device; providing that the results of such measurements shall be accepted as evidence of speed in any court or legal proceedings where the speed of

a vehicle is at issue; authorizing arrests without a warrant when officer is in uniform or displays his badge of authority and when such officer has observed the recording of vehicle's speed by radiomicro waves or other electrical device or has received a radio message from another officer and where made immediately thereafter or as a result of an uninterrupted pursuit; providing for the erection of signs to warn motorists; repealing all acts or parts of acts in conflict herewith.

**32-2150.2. Arrest without a warrant in radar cases.** The driver of any such motor vehicle may be arrested without a warrant under this act provided the arresting officer is in uniform or displays his badge of authority and has either:

(a) Observed the recording of the speed of the vehicle by radiomicro waves or other electrical device; or

(b) Received, from the officer who has observed the speed of the vehicle recorded by the radiomicro waves or other electrical device, a radio

message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded; and

(c) That the arrest without a warrant of any such driver must be made immediately after such observation or radio message and as the result of uninterrupted pursuit.

**History:** En. Sec. 2, Ch. 120, L. 1959.

**32-2150.3. Erection of radar signs.** (a) No operator of a motor vehicle may be arrested under this act unless signs have been placed at or near the state line on the primary highway system, outside towns or cities having over two thousand five hundred (2,500) population, and outside county seats on the primary highways to indicate the legal rate of speed and that the speed of vehicles may be measured by radiomicro waves or other electrical device.

(b) Any municipality which uses radiomicro waves or other electrical device for law enforcement purposes shall erect and maintain appropriate signs giving notice of such use at a conspicuous place at or near the corporate limits of the municipality, upon each state highway and arterial street or highway entering the municipality, and at such other places as may be deemed necessary by the municipal authorities for the information of the traveling public.

**History:** En. Sec. 3, Ch. 120, L. 1959.

pealed all acts or parts of acts in conflict therewith.

**Repealing Clause**

Section 4 of Ch. 120, Laws 1959 re-

**32-2151. Drive on right side of roadway—exceptions.** (a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
2. When the right half of a roadway is closed to traffic while under construction or repair;
3. Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable thereon; or
4. Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

**History:** En. Sec. 48, Ch. 263, L. 1955.

“Driving on Right Side of Roadway—Overtaking and Passing, etc.”

**Compiler's Note**

Sections 32-2151 to 32-2163 comprised Article VI of Ch. 263, Laws 1955 entitled

**32-2152. Passing vehicles proceeding in opposite directions.** Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one (1) line of

traffic in each direction each driver shall give to the other at least one-half ( $\frac{1}{2}$ ) of the main-traveled portion of the roadway as nearly as possible.

**History:** En. Sec. 49, Ch. 263, L. 1955.

**32-2153. Overtaking a vehicle on the left.** The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

**History:** En. Sec. 50, Ch. 263, L. 1955.

**32-2154. When overtaking on right is permitted.** (a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn;
2. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving vehicles in each direction;
3. Upon a one-way street, or upon any roadway on which traffic is restricted to one (1) direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

**History:** En. Sec. 51, Ch. 263, L. 1955.

**32-2155. Limitations on overtaking on the left.** No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the righthand side of the roadway before coming within one hundred (100) feet of any vehicle approaching from the opposite direction.

**History:** En. Sec. 52, Ch. 263, L. 1955.

**32-2156. Further limitations on driving to left of center of roadway.** (a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:



1. When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

2. When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing;

3. When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway.

History: En. Sec. 53, Ch. 263, L. 1955.

**32-2157. No-passing zones.** (a) The commission is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(b) Where signs or markings are in place to define a no-passing zone as set forth in paragraph (a) no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

History: En. Sec. 54, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 97, L. 1957.

word "or" for "and" between the words  
"signs" and "markings."

#### Amendment

The 1957 amendment divided this section into subdivisions by adding a new subd. (b) and in subd. (a) substituted the

#### Repealing Clause

Section 2 of Ch. 97, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**32-2158. One-way roadways and rotary traffic islands.** (a) The commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

(b) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

History: En. Sec. 55, Ch. 263, L. 1955.

**32-2159. Driving on roadways laned for traffic.** Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three (3) lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or



where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

**History:** En. Sec. 56, Ch. 263, L. 1955.

**32-2160. Following too closely.** (a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any truck tractor, truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck tractor, truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck tractor, truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

**History:** En. Sec. 57, Ch. 263, L. 1955.

**32-2161. Driving on divided highways.** Whenever any highway has been divided into two (2) roadways by leaving an intervening space or by physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section except through an opening in such physical barrier or dividing section or space or at a cross-over or intersection established by public authority.

**History:** En. Sec. 58, Ch. 263, L. 1955.

**32-2162. Restricted access.** No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

**History:** En. Sec. 59, Ch. 263, L. 1955.

**32-2163. Restrictions on use of controlled-access roadway.** The commission may by resolution or order entered in its minutes, and local authorities may by ordinance with respect to any controlled-access roadway under their respective jurisdictions prohibit the use of any such roadway by pedestrians, bicycles, or other nonmotorized traffic or by any person operating a motor-driven cycle.

The commission or the local authority adopting any such prohibitory regulation shall erect and maintain official signs on the controlled-access roadway on which such regulations are applicable and when so erected no person shall disobey the restrictions stated on such signs.

**History:** En. Sec. 60, Ch. 263, L. 1955.

**32-2164. Required position and method of turning at intersections.** The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) **Right Turns.** Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) **Left Turn on Two-Way Roadways.** At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) **Left Turns on Other Than Two-Way Roadways.** At any intersection where traffic is restricted to one (1) direction on one (1) or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(d) **Placing of Markers, Buttons and Signs.**

1. Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

**History:** En. Sec. 61, Ch. 263, L. 1955. titled "Turning and Starting and Signals on Stopping and Turning."

**Compiler's Note**

Sections 32-2164 to 32-2169 comprised Article VII of Ch. 263, Laws 1955 en-

**32-2165. Turning on curve or crest of grade prohibited.** No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

**History:** En. Sec. 62, Ch. 263, L. 1955.

**32-2166. Starting parked vehicle.** No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

**History:** En. Sec. 63, Ch. 263, L. 1955.

**32-2167. Turning movements and required signals.** (a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by section 61 [32-2164] or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

**History:** En. Sec. 64, Ch. 263, L. 1955.

**32-2168. Signals by hand and arm or signal device.** (a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps, except as otherwise provided in paragraph (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four (24) inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen (14) feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

**History:** En. Sec. 65, Ch. 263, L. 1955; "or mechanical signal device" which appeared after the words "signal lamp or lamps" in both subds. (a) and (b) and in subd. (b) substituted the word "cab" for "cap."  
amd. Sec. 1, Ch. 105, L. 1957.

**Amendment**

The 1957 amendment deleted the words

**32-2169. Method of giving hand-and-arm signals.** All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

1. Left Turn. Hand and arm extended horizontally.
2. Right Turn. Hand and arm extended upward.
3. Stop or Decrease Speed. Hand and arm extended downward.

**History:** En. Sec. 66, Ch. 263, L. 1955.

**32-2170. Vehicle approaching or entering intersection.** (a) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway.



(b) When two (2) vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(c) The right-of-way rules declared in paragraphs (a) and (b) are modified at through highways and otherwise as hereinafter stated in this article.

**History:** En. Sec. 67, Ch. 263, L. 1955. Article VIII of Ch. 263, Laws 1955 entitled "Rights of Way."

**Compiler's Note**

Sections 32-2170 to 32-2175 comprised

**32-2171. Vehicle turning left at intersection.** The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this act, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right of way to the vehicle making the left turn. The provisions of this section shall not be applicable where it is otherwise directed by appropriate signs or signals.

**History:** En. Sec. 68, Ch. 263, L. 1955.

**32-2172. Vehicle entering through highway or stop intersection.** (a) The driver of a vehicle shall stop as required by section 92 [32-2195] of this act at the entrance to a through highway and shall yield the right of way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right of way to the vehicle so proceeding into or across the through highway.

(b) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one (1) or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

**History:** En. Sec. 69, Ch. 263, L. 1955;  
amd. Sec. 3, Ch. 169, L. 1957.

**Amendment**

The 1957 amendment substituted "section 92" for "section 93" in subd. (a).

**32-2173. Vehicle entering highway from private road or driveway.** The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles approaching on said highway.

**History:** En. Sec. 70, Ch. 263, L. 1955.

**32-2174. Vehicles approaching "Yield Right-of-Way" sign.** When the intersection is designated by the commission, or the local authority having jurisdiction, as a "Yield Right-of-Way" intersection, the driver of a vehicle approaching the "Yield Right-of-Way" sign shall slow to a speed of not



more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield Right-of-Way" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

**History:** En. Sec. 71, Ch. 263, L. 1955.

**32-2175. Operation of vehicles on approach of authorized emergency vehicles.** (a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of section 129 [32-21-132] of this act, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrolman.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

**History:** En. Sec. 72, Ch. 263, L. 1955;  
amd. Sec. 4, Ch. 169, L. 1957.

**Repealing Clause**

Section 5 of Ch. 169, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1957 amendment substituted "section 129" for "section 130" in subd. (a).

**32-2176. Pedestrians subject to traffic regulations.** (a) Pedestrians shall be subject to traffic-control signals at intersections as provided in section 34 [32-2137] of this act unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article [32-2176 to 32-2183].

(b) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

**History:** En. Sec. 73, Ch. 263, L. 1955.

Article IX of Ch. 263, Laws 1955 entitled "Pedestrians' Rights and Duties."

**Compiler's Note**

Sections 32-2176 to 32-2183 comprised

**32-2177. Pedestrians' right of way in crosswalk.** (a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly

leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in section 75 (b) [32-2178 (b)].

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

**History:** En. Sec. 74, Ch. 263, L. 1955.

**32-2178. Crossing at other than crosswalks.** (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

**History:** En. Sec. 75, Ch. 263, L. 1955.

#### **Last Clear Chance**

Decedent, who was killed while crossing highway, did not come into a position of peril any appreciable length of time before the injury. Had he stood still defendant would have avoided striking him. The evidence showed that it was the sudden running of deceased into the moving automobile that produced his injuries and death. Under the evidence defendant had

no reasonable opportunity to avoid striking decedent after he took the perilous step. Under such circumstances an instruction on last clear chance had no place in the case. *Hightower v. Alley*, 132 M 349, 318 P 2d 243, 248.

#### **Ordinary Care**

Pedestrian must use ordinary care for his own safety in attempting to cross highway. *Hightower v. Alley*, 132 M 349, 318 P 2d 243, 247.

**32-2179. Drivers to exercise due care.** Notwithstanding the foregoing provisions of this article [32-2176 to 32-2183] every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

**History:** En. Sec. 76, Ch. 263, L. 1955.

**32-2180. Pedestrians to use right half of crosswalk.** Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

**History:** En. Sec. 77, Ch. 263, L. 1955.

**32-2181. Pedestrians on roadways.** (a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

**History:** En. Sec. 78, Ch. 263, L. 1955.

**32-2182. Pedestrian soliciting rides or business.** (a) No person shall stand in a roadway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

**History:** En. Sec. 79, Ch. 263, L. 1955.

**32-2183. Intoxicated pedestrian.** No person shall walk upon or along the highway while under the influence of intoxicating liquor.

**History:** En. Sec. 80, Ch. 263, L. 1955.

**32-2184. Effect of regulations.** (a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this article [32-2184 to 32-2190].

(b) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

**History:** En. Sec. 81, Ch. 263, L. 1955. "Operation of Bicycles and Play Vehicles."

**Compiler's Note**

Sections 32-2184 to 32-2190 comprised Article X of Ch. 263, Laws 1955 entitled

**32-2185. Traffic laws apply to persons riding bicycles.** Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this act, except as to special regulations in this article [32-2184 to 32-2190] and except as to those provisions of this act which by their very nature can have no application.

**History:** En. Sec. 82, Ch. 263, L. 1955.

**32-2186. Riding on bicycles.** A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

**History:** En. Sec. 83, Ch. 263, L. 1955.

**32-2187. Clinging to vehicles.** No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

**History:** En. Sec. 84, Ch. 263, L. 1955.

**32-2188. Riding on roadways and bicycle paths.** (a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

**History:** En. Sec. 85, Ch. 263, L. 1955.



**32-2189. Carrying articles.** No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one (1) hand upon the handle bars.

**History:** En. Sec. 86, Ch. 263, L. 1955.

**32-2190. Lamps and other equipment on bicycles.** (a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear of a type approved by the board which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

**History:** En. Sec. 87, Ch. 263, L. 1955.

**32-2191. Obedience to signal indicating approach of train.** (a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

1. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

2. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

3. A railroad train approaching within approximately one thousand five hundred (1,500) feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

**History:** En. Sec. 88, Ch. 263, L. 1955. Article XI of Ch. 263, Laws 1955 entitled "Special Stops Required."

**Compiler's Note**

Sections 32-2191 to 32-2198 comprised

**32-2192. All vehicles must stop at certain railroad grade crossings.** The commission and local authorities are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

**History:** En. Sec. 89, Ch. 263, L. 1955.



**32-2193. Certain vehicles must stop at all railroad grade crossings.** (a) The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossings and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or highway patrolman or traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district.

**History:** En. Sec. 90, Ch. 263, L. 1955.

**32-2194. Moving heavy equipment at railroad grade crossings.** (a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten (10) or less miles per hour or a vertical body or load clearance of less than one-half ( $\frac{1}{2}$ ) inch per foot of the distance between any two (2) adjacent axles or in any event of less than nine (9) inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen (15) feet nor more than fifty (50) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

**History:** En. Sec. 91, Ch. 263, L. 1955.

**32-2195. Vehicles must stop at stop signs.** (a) The commission with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one (1) or more entrances to such intersection.

(b) Every said sign shall bear the word "Stop" in letters not less than eight (8) inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

(d) Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer or high-way patrolman or traffic-control signal.

**History:** En. Sec. 92, Ch. 263, L. 1955.

**32-2196. Stop before emerging from alley, driveway, or building.** The driver of a vehicle within a business or residence district emerging from an alley, driveway, or building, shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway.

**History:** En. Sec. 93, Ch. 263, L. 1955.

**32-2197. Overtaking and passing school bus.** (a) The driver of a vehicle upon a highway outside of a business or residence district upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual signal as specified in section 129 [32-21-132] and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed as the visual signals are no longer actuated.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height, and in addition shall be equipped with visual signals meeting the requirements of section 129 [32-21-132] of this act, which shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(d) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is

stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

**History:** En. Sec. 94, Ch. 263, L. 1955.

**Cross-Reference**

For other school bus regulations see secs. 75-3308 to 75-3311.

**32-2198. Special lighting equipment on school busses.** It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

**History:** En. Sec. 95, Ch. 263, L. 1955.

**Cross-Reference**

For other school bus regulations see secs. 75-3308 to 75-3311.

**32-2199. Stopping, standing, or parking outside of business or residence districts.** (a) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles; and no person shall stop, stand or park any vehicle upon such highway unless such vehicle can be seen by the driver of any other vehicle approaching, from either direction, within five hundred (500) feet and unless drivers approaching from opposite directions are visible to each other when both are at least five hundred (500) feet from the vehicle to be stopped, turned or parked, except in cases of justifiable emergency.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

**History:** En. Sec. 96, Ch. 263, L. 1955.

Article XII of Ch. 263, Laws 1955 entitled "Stopping, Standing, and Parking."

**Compiler's Note**

Sections 32-2199 to 32-21-102 comprised

## DECISIONS UNDER FORMER LAW

### Stalled Truck

Where truck had run out of gas, its driver was negligent in not removing the vehicle from the highway when the op-

erator of a passing vehicle offered to assist truck driver in getting truck off the highway. *Burns v. Fisher*, 132 M 26, 313 P 2d 1044, 1048.

**32-21-100. Officers or highway patrolmen authorized to remove illegally stopped vehicles.** (a) Whenever any police officer or highway patrolman finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this article [32-2199 to 32-21-102] such officer or highway patrolman is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

(b) Whenever any police officer or highway patrolman finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer or highway patrol-



man is hereby authorized to provide for the removal of such vehicle to the nearest place of safety.

History: En. Sec. 97, Ch. 263, L. 1955.

**32-21-101. Stopping, standing, or parking prohibited in specified places.**

(a) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or highway patrolman or traffic-control device, in any of the following places:

1. On a sidewalk;
2. In front of a public or private driveway;
3. Within an intersection;
4. Within fifteen (15) feet of a fire hydrant;
5. On a crosswalk;
6. Within twenty (20) feet of a crosswalk at an intersection;
7. Within thirty (30) feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;
8. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;
9. Within fifty (50) feet of the nearest rail of a railroad crossing;
10. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance when properly signposted;
11. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
13. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
14. At any place where official signs prohibit stopping.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

History: En. Sec. 98, Ch. 263, L. 1955.

**32-21-102. Additional parking regulations.** (a) Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen (18) inches of the right-hand curb.

(b) Local authorities may by ordinance permit parking of vehicle with the left-hand wheels adjacent to and within eighteen (18) inches of the left-hand curb of a one-way roadway.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the commission has determined by resolution or order entered in its minutes that the roadway is of sufficient width



to permit angle parking without interfering with the free movement of traffic.

(d) The commission with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on any highway where in its opinion, as evidenced by resolution or order entered in its minutes, such stopping, standing, or parking, is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

**History:** En. Sec. 99, Ch. 263, L. 1955.

**32-21-103. Unattended motor vehicles.** No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway in such a manner as to prevent the vehicle from rolling onto the roadway.

**History:** En. Sec. 100, Ch. 263, L. 1955.      Amended Article XIII of Ch. 263, Laws 1955 entitled "Miscellaneous Rules."

**Compiler's Note**

Sections 32-21-103 to 32-21-113 com-

**32-21-104. Limitations on backing.** The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

**History:** En. Sec. 101, Ch. 263, L. 1955.

**32-21-105. Riding on motorcycles.** A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

**History:** En. Sec. 102, Ch. 263, L. 1955.

**32-21-106. Obstruction to driver's view or driving mechanism.** (a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three (3), as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.

**History:** En. Sec. 103, Ch. 263, L. 1955.

**32-21-107. Driving on mountain highways.** The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible.

**History:** En. Sec. 104, Ch. 263, L. 1955.

**32-21-108. Coasting prohibited.** The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral or with the clutch manually disengaged.

**History:** En. Sec. 105, Ch. 263, L. 1955.

**32-21-109. Following fire apparatus prohibited.** The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

**History:** En. Sec. 106, Ch. 263, L. 1955.

**32-21-110. Crossing fire hose.** No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

**History:** En. Sec. 107, Ch. 263, L. 1955.

**32-21-111. Putting glass, etc., on highway prohibited.** (a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

(b) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

**History:** En. Sec. 108, Ch. 263, L. 1955.

**32-21-112. Riding on fenders or running boards prohibited.** Any person driving a vehicle shall not permit passengers to ride on the fenders or running boards nor shall any passenger ride on the fenders or running boards of a vehicle.

**History:** En. Sec. 109, Ch. 263, L. 1955.

**32-21-112.1. Riding in house trailers.** No person or persons shall occupy a house trailer while it is being moved upon a public highway.

**History:** Sec. 109.1, Ch. 263, L. 1955 as added by Sec. 1, Ch. 167, L. 1957.

#### **Title of Act**

An act to amend chapter 263 of the Session Laws of the Thirty-Fourth Legislative Assembly of the state of Montana, 1955, by adding thereto two new sections numbered 109.1 and 109.2, relating to riding

on fenders and running boards of vehicles; by prohibiting persons from riding in trailer houses being towed along highways; by prohibiting persons from opening vehicle doors on side available to traffic when such acts create a hazard; by repealing all acts and parts of acts in conflict herewith.

**32-21-112.2. Opening and closing vehicles doors.** No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

History: Sec. 109.2, Ch. 263, L. 1955 as added by Sec. 1, Ch. 167, L. 1957.

## Repealing Clause

Section 2 of Ch. 167, Laws 1957 repealed

**32-21-113. Shooting from or across highway.** No person shall shoot any firearm from or across the roadway of any state or federal highway.

**History:** En. Sec. 110, Ch. 263, L. 1955.      **Cross-Reference**

Shooting game from automobile or highway prohibited, sec. 26-301, par. 1.

**32-21-114. Scope and effect of regulations.** (a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article [32-21-114 to 32-21-153] or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article [32-21-114 to 32-21-153].

(b) Nothing contained in this article [32-21-114 to 32-21-153] shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this article [32-21-114 to 32-21-153].

(c) The provisions of this article [32-21-114 to 32-21-153] with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

**History:** En. Sec. 111, Ch. 263, L. 1955.      prised Article XIV of Ch. 263, Laws 1955  
entitled "Equipment."

## Compiler's Note

Sections 32-21-114 to 32-21-153 com-

32-21-115. When lighted lamps are required. Every vehicle upon a highway within this state at any time from a half ( $\frac{1}{2}$ ) hour after sunset to a half ( $\frac{1}{2}$ ) hour before sunrise and at any other time when due to insufficient light, or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of five hundred (500) feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles.

**History:** En. Sec. 112, Ch. 263, L. 1955.

**32-21-116. Visibility distance and mounted height of lamps.** (a) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in section 112 [32-21-115] in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.



(b) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

**History:** En. Sec. 113, Ch. 263, L. 1955.

**32-21-117. Head lamps on motor vehicles.** (a) Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two (2) head lamps with at least one (1) on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this article [32-21-114 to 32-21-153].

(b) Every motorcycle and every motor-driven cycle shall be equipped with at least one (1) and not more than two (2) head lamps which shall comply with the requirements and limitations of this article [32-21-114 to 32-21-153].

(c) Every head lamp upon every motor vehicle, including every motorcycle and every motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four (54) inches nor less than twenty-four (24) inches to be measured as set forth in section 113(b) [32-21-116(b)], chapter 263 of the Session Laws of the Thirty-fourth Legislative Assembly of the state of Montana, 1955.

**History:** En. Sec. 114, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 103, L. 1957.

**Repealing Clause**

Section 2 of Ch. 103, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1957 amendment in subd. (c) changed the lower minimum height of head lamps from 28 to 24 inches.

**32-21-118. Tail lamps.** (a) Every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one (1) tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. And further, every such above-mentioned vehicle, other than a truck-tractor, registered in this state and manufactured or assembled after January 1, 1956, shall be equipped with at least two (2) tail lamps mounted on the rear, which when lighted as herein required, shall comply with the provisions of this section.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two (72) inches nor less than twenty (20) inches.

(c) Either tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

**History:** En. Sec. 115, Ch. 263, L. 1955.



**32-21-119. New motor vehicles to be equipped with reflectors.** (a) Every new motor vehicle hereafter sold and operated upon a highway, other than a truck-tractor, shall carry on the rear, either as a part of the tail lamps or separately, two (2) red reflectors, except that every motorcycle and motor-driven cycle shall carry at least one (1) reflector, meeting the requirements of this section, and except that vehicles of the type mentioned in section 119 [32-21-122] shall be equipped with reflectors as required in those sections applicable thereto.

(b) Every such reflector shall be mounted on the vehicle at a height not less than twenty (20) inches nor more than sixty (60) inches measured as set forth in section 113(b) [32-21-116(b)], and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred (300) feet to fifty (50) feet from such vehicle when directly in front of lawful upper beams of head lamps, except that visibility from a greater distance is hereinafter required of reflectors on certain types of vehicles.

**History:** En. Sec. 116, Ch. 263, L. 1955.

**32-21-120. Stop lamps and turn signals required on new motor vehicles.** From and after January 1, 1956, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle or motor-driven cycle, in this state or for any person to drive such vehicle on the highways unless it is equipped with at least one (1) stop lamp meeting the requirements of section 130 [32-21-133].

**History:** En. Sec. 117, Ch. 263, L. 1955.

**32-21-121. Application of succeeding sections.** Those sections of this act which follow immediately including sections 119, 120, 121, 122, and 124 [32-21-122, 32-21-123, 32-21-124, 32-21-125, and 32-21-127] relating to clearance and marker lamps, reflectors, and stop lights, shall apply as stated in said sections to vehicles of the type therein enumerated, namely passenger busses, trucks, truck tractors, and certain trailers, semitrailers, and pole trailers, respectively, when operated upon any highway, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at all times mentioned in section 112 [32-21-115] except that clearance and side marker lamps need not be lighted on any said vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred (500) feet.

**History:** En. Sec. 118, Ch. 263, L. 1955.

**32-21-122. Additional equipment required on certain vehicles.** In addition to other equipment required in this act the following vehicles shall be equipped as herein stated under the conditions stated in section 118 [32-21-121].

(a) On every bus or truck, whatever its size, there shall be the following:

On the rear, two (2) reflectors, one (1) at each side, and one (1) stop light.

(b) On every bus or truck eighty (80) inches or more in over-all width, in addition to the requirements in paragraph (a):

On the front, two (2) clearance lamps, one (1) at each side.

On the rear, two (2) clearance lamps, one (1) at each side.

On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.

On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

(c) On every truck-tractor:

On the front, two (2) clearance lamps, one (1) at each side.

On the rear, one (1) stop light.

(d) On every trailer or semitrailer having a gross weight in excess of three thousand (3,000) pounds:

On the front, two (2) clearance lamps, one (1) at each side.

On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.

On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

On the rear, two (2) clearance lamps, one (1) at each side, also two (2) reflectors, one (1) at each side, and one (1) stop light.

(e) On every pole trailer in excess of three thousand (3,000) pounds gross weight:

On each side, one (1) side marker lamp and one (1) clearance lamp which may be in combination, to show to the front, side, and rear.

On the rear of the pole trailer or load, two (2) reflectors, one (1) at each side.

(f) On every trailer, semitrailer, or pole trailer weighing three thousand (3,000) pounds gross or less:

On the rear, two (2) reflectors, one (1) on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one (1) stop light.

(g) On every truck or truck-trailer combination actively engaged in transporting logs:

#### (1) Binders on Logging Vehicles

(a) At least three (3) binders shall be required as standard equipment on any truck or truck-trailer combination actively engaged in transporting logs upon the public highways of the state of Montana;

(b) Such binders to be of steel chain or steel cable;

(c) The minimum diameter of any portion of such binders shall be three-eighths ( $\frac{3}{8}$ ) of one inch;

(d) Such binders shall be of sufficient length to encompass any load when secured by a fastener.

#### (2) Use of Fasteners to Secure Binders

(a) Binders used to secure loads of logs together shall be fastened by means of a fastener.

(b) The minimum diameter of the portions of the fastener under direct stress from the binder shall be three-eighths ( $\frac{3}{8}$ ) of one inch.

(c) The handle, or leverage portion of the fastener, when in use in tightening and holding the binder, shall be securely fastened to the

binder or to the fastener in such a way that it cannot be accidentally loosened.

(3) Number and Location of Binders

At least two (2) binders shall be in use on all loads. Such binders shall be placed as close as reasonably possible to the front and rear bunks.

(4) Securing Short Loads

In the event short logs are loaded on top of longer logs, sufficient binders shall be used to secure both ends of such short logs to the main body of the load.

(5) Procedure for Loading—Width Limits

(a) The maximum width of any vehicle, unladen or with load, shall not exceed a width of ninety-six (96) inches, unless permits for excess width have been granted by virtue of section 32-1127, Revised Codes of Montana, 1947, as amended.

(b) No logs may extend laterally beyond the stakes which form the outer boundary of the load at the top of such stakes. Logs or poles loaded above the tops of the stakes shall be loaded in a pyramidal fashion.

(h) The board is hereby empowered to make additional rules and regulations governing the use of safety equipment on motor vehicles, vehicles and/or combination of vehicles, that is, trailer hitches, safety chains, mounts, tow bars and other similar equipment as it shall deem advisable for the protection of the public; provided further that any violation of any rules and regulations adopted by the board shall be deemed a misdemeanor.

**History:** En. Sec. 119, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 233, L. 1959.

**Repealing Clause**

Section 2 of Ch. 233, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Amendment**

The 1959 amendment added all of subd. (g) and renumbered old subdivision (g) as (h).

**32-21-123. Color of clearance lamps, side marker lamps, reflectors and back-up lamps.** (a) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(b) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(c) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber, or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp may be white, amber, or red.

**History:** En. Sec. 120, Ch. 263, L. 1955.

**32-21-124. Mounting of reflectors, clearance lamps, and side marker lamps.** (a) Reflectors when required by section 119 [32-21-122] shall be mounted at a height not less than twenty-four (24) inches and not higher than sixty (60) inches above the ground on which the vehicle



stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four (24) inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this act.

(b) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

**History:** En. Sec. 121, Ch. 263, L. 1955.

**32-21-125. Visibility of reflectors, clearance lamps, and marker lamps.**

(a) Every reflector upon any vehicle referred to in section 119 [32-21-122] shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within six hundred (600) feet to one hundred (100) feet from the vehicle when directly in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the front and rear respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the side of the vehicle on which mounted.

**History:** En. Sec. 122, Ch. 263, L. 1955.

**32-21-126. Obstructed lights not required.** Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirements that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

**History:** En. Sec. 123, Ch. 263, L. 1955.

**32-21-127. Lamp or flag on projecting load.** Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in section 112 [32-21-115] hereof, a red light or lantern plainly visible from a distance of at least five hundred (500) feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red light required upon every vehicle. At any



other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

History: En. Sec. 124, Ch. 263, L. 1955.

**32-21-128. Lamps on parked vehicles.** (a) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half ( $\frac{1}{2}$ ) hour after sunset and a half ( $\frac{1}{2}$ ) hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred (500) feet upon such street or highway no lights need be displayed upon such parked vehicle.

(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half ( $\frac{1}{2}$ ) hour after sunset and a half ( $\frac{1}{2}$ ) hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred (500) feet upon such highway, such vehicle so parked or stopped shall be equipped with one (1) or more lamps meeting the following requirements: At least one (1) lamp shall display a white or amber light visible from a distance of five hundred (500) feet to the front of the vehicle, and the same lamp or at least one (1) other lamp shall display a red light visible from a distance of five hundred (500) feet to the rear of the vehicle, and the location of said lamp or lamps, shall always be such that at least one (1) lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(c) Any lighted headlamp upon a parked vehicle shall be depressed or dimmed.

History: En. Sec. 125, Ch. 263, L. 1955.

**32-21-129. Lamps on farm tractors, farm equipment, and implements of husbandry.** (a) Every farm tractor and every self-propelled farm equipment unit or implement of husbandry not equipped with an electric lighting system shall at all times mentioned in section 112 [32-21-115] be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of such vehicle and shall also be equipped with at least one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear of such vehicle and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of headlamps. The lights required herein shall be positioned so that one (1) lamp showing to the front and one (1) lamp or reflector showing to the rear will indicate the furthest projection of said tractor, unit or implement on the side of the road used in passing such vehicle.

(b) Every combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system shall at all times mentioned in section 112 [32-21-115] be equipped with the following lamps:

(1) At least one (1) lamp mounted to indicate as nearly as practicable the extreme left projection of said combination and displaying a white light visible from a distance of not less than five hundred (500) feet to the front of said combination, and

(2) Two (2) lamps each displaying a red light visible from a distance of not less than five hundred (500) feet to the rear of said combination, or as an alternative, at least one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear thereof and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear thereof when illuminated by the upper beams of headlamps, which said lamps or reflectors shall be mounted in such manner as to indicate as nearly as practicable the extreme left and right rear projections of said towed unit or implement on the highway.

(c) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system shall at all times mentioned in section 112 [32-21-115] be equipped with two (2) single-beam or multiple-beam headlamps meeting the requirements of sections 132 or 134 [32-21-135 or 32-21-137] of this act respectively, or as an alternative, section 136 [32-21-139] of this act, and two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or in the alternative, one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of headlamps; and such red lamps or reflectors shall be mounted in the rear of said farm tractor or self-propelled implement of husbandry so as to indicate as nearly as practicable the extreme left and right projections of said vehicle on the highway.

(d) Every combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system shall at all times mentioned in section 112 [32-21-115] be equipped with the following lamps:

(1) The farm tractor element of every such combination shall be equipped with two (2) single-beam or multiple-beam headlamps meeting the requirements of sections 132, 134, or 136 [32-21-135, 32-21-137, or 32-21-139] of this act, and

(2) The towed unit of farm equipment or implement of husbandry element of such combination shall be equipped with two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or as an alternative, one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of headlamps; and such red lamps or reflectors shall be located so as to indicate as nearly as practicable the extreme left and right projections of said towed unit or implement on the highway, and

(3) Said combination shall also be equipped with a lamp displaying a white or amber light, or any shade of color between white and amber,

visible from a distance of not less than five hundred (500) feet to the front and a lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear, which said lamp or lamps shall be installed or capable of being positioned so as to indicate to the front and rear the furthest projection of said combination on the side of the road used by other vehicles in passing such combination.

**History:** En. Sec. 126, Ch. 263, L. 1955.

**32-21-130. Lamps on other vehicles and equipment.** Every vehicle, including animal-drawn vehicles and vehicles referred to in section 111 (c) [32-21-114(c)], not specifically required by the provisions of this article [32-21-114 to 32-21-153] to be equipped with lamps or other lighting devices, shall at all times specified in section 112 [32-21-115] of this act be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than five hundred (500) feet to the rear of said vehicle, or as an alternative, one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of headlamps.

**History:** En. Sec. 127, Ch. 263, L. 1955.

**32-21-131. Spot lamps and auxiliary lamps.** (a) Spot Lamps. Any motor vehicle may be equipped with not to exceed two (2) spot lamps and every lighted spot lamp shall be turned off upon approaching another moving vehicle from either direction.

(b) Fog Lamps. Any motor vehicle may be equipped with not to exceed two (2) fog lamps mounted on the front at a height not less than twelve (12) inches nor more than thirty (30) inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five (25) feet ahead project higher than a level of four (4) inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head-lamp beams as specified in section 132 (b) [32-21-135(b)], chapter 263, Laws of 1955.

(c) Auxiliary Passing Lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary passing lamps mounted on the front at a height not less than twenty-four (24) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of section 132 [32-21-135], chapter 263, Laws of 1955, shall apply to any combination of head lamps and auxiliary passing lamps.

(d) Auxiliary Driving Lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary driving lamps mounted on the front at a height not less than sixteen (16) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of section 132 [32-21-135], chapter 263, Laws of 1955, shall apply to any combination of heads lamps and auxiliary driving lamps.



**History:** En. Sec. 128, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 147, L. 1957.

**Repealing Clause**

Section 2 of Ch. 147, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1957 amendment in subds. (c) and (d) substituted "two (2)" for "one (1)" and made the word "lamp" plural wherever used.

**32-21-132. Audible and visual signals on vehicles.** (a) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every bus used for the transportation of school children and every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(c) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 72 and 94 [32-2175 and 32-2197] of this act.

**History:** En. Sec. 129, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 40, L. 1959.

**Repealing Clause**

Section 2 of Ch. 40, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Amendment**

The 1959 amendment in subd. (b) substituted the word "red" for the word "amber" following the words "front two (2) alternately flashing."

**32-21-133. Signal lamps and signal devices.** (a) Any motor vehicle may be equipped and when required under this act shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one (1) or more other rear lamps.

(b) Any motor vehicle may be equipped and when required under this act shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. When lamps are used for such purposes, the lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than one hundred (100) feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light,



or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(c) No stop lamp or signal lamp or device shall project a glaring light.

**History:** En. Sec. 130, Ch. 263, L. 1955; amd. Sec. 2, Ch. 105, L. 1957.

#### **Amendment**

The 1957 amendment deleted from subd. (b) the words "or mechanical signal devices" which appeared after the words "equipped with lamps" in the first sentence and also deleted from the end of subd. (b) a sentence which read "Where mechanical

signal devices are used for such purposes, said devices shall be self-illuminated when in use at the times mentioned in section 112."

#### **Repealing Clause**

Section 3 of Ch. 105, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**32-21-134. Additional lighting equipment.** (a) Any motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one (1) running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with not more than two (2) back-up lamps either separately or in combination with other lamps, but any such back-up lamps shall not be lighted when the motor vehicle is in forward motion.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing, and when so equipped may display such warning in addition to any other warning signals required by this act. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred (500) feet under normal atmospheric conditions at night.

**History:** En. Sec. 131, Ch. 263, L. 1955.

**32-21-135. Multiple-beam road-lighting equipment.** Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor-driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at

a distance of at least three hundred fifty (350) feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred (100) feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motorcycle, or motor-driven cycle, registered in this state after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

**History:** En. Sec. 132, Ch. 263, L. 1955.

**32-21-136. Use of multiple-beam road-lighting equipment.** (a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 112 [32-21-115], the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle subject to the following requirements and limitations:

(b) Whenever the driver of a vehicle approaches an oncoming vehicle within one thousand (1,000) feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver.

The lowermost distribution of light specified in Item 1 of section 132 (b) [32-21-135(b)] shall be deemed to avoid glare at all times, regardless of road contour and loading.

(c) Whenever the driver of a vehicle follows another vehicle within three hundred (300) feet to the rear, such driver shall use a distribution of light permissible under this act other than the uppermost distribution of light specified in paragraph (a) of section 132 [32-21-135].

**History:** En. Sec. 133, Ch. 263, L. 1955.

**32-21-137. Single-beam road-lighting equipment.** Head lamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to one (1) year after the effective date of this act in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

1. The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five (25) feet ahead project higher than a level of five (5) inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two (42) inches above the level on which the vehicle stands at a distance of seventy-five (75) feet ahead.

2. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred (200) feet.

**History:** En. Sec. 134, Ch. 263, L. 1955.

**32-21-138. Lighting equipment on motor-driven cycles.** The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

1. Every said head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred (100) feet when the motor-driven cycle is operated at any speed less than twenty-five (25) miles per hour and at a distance of not less than two hundred (200) feet when the motor-driven cycle is operated at a speed of twenty-five (25) or more miles per hour, and at a distance of not less than three hundred (300) feet when the motor-driven cycle is operated at a speed of thirty-five (35) or more miles per hour.

2. In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in section 132 (a) [32-21-135(a)] and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in section 132(b) [32-21-135(b)].

3. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light at a distance of twenty-five (25) feet ahead, shall project higher than the level of the center of the lamp from which it comes.

**History:** En. Sec. 135, Ch. 263, L. 1955.

**32-21-139. Alternate road-lighting equipment.** Any motor vehicle may be operated under the conditions specified in section 112 [32-21-115] when equipped with two (2) lighted lamps upon the front thereof capable of revealing persons and objects seventy-five (75) feet ahead in lieu of lamps required in section 132 [32-21-135] or section 134 [32-21-137] provided, however, that at no time shall it be operated at a speed in excess of twenty (20) miles per hour.

**History:** En. Sec. 136, Ch. 263, L. 1955.

**32-21-140. Number of driving lamps required or permitted.** (a) At all times specified in section 112 [32-21-115], at least two (2) lighted lamps shall be displayed one (1) on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than three hundred (300) candlepower, not more than a total of four (4)



of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

**History:** En. Sec. 137, Ch. 263, L. 1955.

**32-21-141. Special restrictions on lamps.** (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon a highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this code.

(c) Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow-removal equipment, or on any vehicle as a means for indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

**History:** En. Sec. 138, Ch. 263, L. 1955.

**32-21-141.1. Blinker-type red light on fireman's private vehicle—use—identification card.** Firemen, when authorized by the chief of their respective department, shall be permitted to use a blinker-type red light on the front of their privately owned motor vehicles with the word "FIRE" inscribed on the lens, which lens shall not exceed five and one-half inches in diameter. This light shall be used on emergency duty only.

Any fireman displaying the emergency red light on his privately owned motor vehicle, shall also carry attached to a convenient location on the vehicle to which the red light is attached, an identification card showing the name of the owner of said vehicle, the organization to which he belongs, and bearing the signature of the chief of his department, authorizing the emergency use of said light.

**History:** En. Sec. 1, Ch. 154, L. 1957.

**Title of Act**

An act permitting the use of a red blinker-type light by firemen on their pri-

vately owned motor vehicles when on emergency duty only; describing the emergency light; providing that it shall be a misdemeanor for the misuse thereof; and containing a repealing clause.

**32-21-141.2. Violation—misdemeanor.** Any person violating the provisions of this act [32-21-141.1, 32-21-141.2] is guilty of a misdemeanor.

**History:** En. Sec. 2, Ch. 154, L. 1957.

**Repealing Clause**

Section 3 of Ch. 154, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**32-21-142. Standards for lights on snow-removal equipment.** (a) The commission shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow-removal equipment when operated on the highways of this state in lieu of the lamps



otherwise required on motor vehicles by this act. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with, and so far as possible, conform with those approved by the American association of state highway officials.

(b) It shall be unlawful to operate any snow-removal equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

History: En. Sec. 139, Ch. 263, L. 1955.

### 32-21-143. Brakes. (a) Brake Equipment Required.

1. Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two (2) separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two (2) wheels. If these two (2) separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one (1) part of the operating mechanism shall not leave the motor vehicle without brakes on at least two (2) wheels.

2. Every motorcycle and every motor-driven cycle, when operated upon a highway, shall be equipped with at least one (1) brake which may be operated by hand or foot.

3. Every trailer or semitrailer of a gross weight of three thousand (3,000) pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes shall be so designed and connected that in case of an accidental break-away of the towed vehicle the brakes shall be automatically applied.

4. Every new motor vehicle, trailer, or semitrailer hereafter sold in this state and operated upon the highways shall be equipped with service brakes upon all wheels of every such vehicle, except that any vehicle having three (3) or more axles shall have brakes on the wheels of at last two (2) axels, and except any motorcycle or motor-driven cycle, or any semitrailer of less than one thousand five hundred (1,500) pounds gross weight need not be equipped with brakes.

5. One of the means of brake operation shall consist of a mechanical connection from the operating lever to the brake shoes or bands and this brake shall be capable of holding the vehicle, or combination of vehicles, stationary under any condition of loading on any upgrade or down grade upon which it is operated.

6. The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance Ability of Brakes. Every motor vehicle or combination of vehicles at all times and under all conditions of loading shall,

upon application of the service (foot) brake, be capable of decelerating and developing a braking force equivalent to such deceleration according to the minimum requirements set forth herein, and also of stopping within the distances set forth herein :

	Stopping distance in feet	Deceleration in feet per second per second	Equivalent braking force in percentage of vehicle or combination weight
Passenger vehicles not including busses-----	25	17	53.0%
Single-unit vehicles with a manufacturer's gross vehicle weight rating of less than 10,000 pounds -----	30	14	43.5%
Single-unit, 2-axle vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or more-----	40	14	43.5%
All other vehicles and combinations with a manufacturer's gross vehicle weight rating of 10,000 or more pounds-----	50	14	43.5%

Compliance with standards set forth herein shall be determined either (1) by actual road tests conducted on a substantially level (not to exceed a plus or minus one per cent (1%) grade), dry, smooth, hard-surfaced road that is free from loose material, and with stopping distances measured from the actual instant braking controls are moved and from an initial speed of twenty (20) miles per hour, or else (2) by suitable mechanical tests in a testing lane which recreates such same conditions, or (3) by a combination of both methods.

Stopping distance shall be measured from the instant braking controls are moved and from an initial speed of twenty (20) miles per hour.

History: En. Sec. 140, Ch. 263, L. 1955; amd. Sec. 1, Ch. 81, L. 1957.

Amendment

The 1957 amendment in subd. 4 inserted the words "except that any vehicle having three (3) or more axles shall have brakes on the wheels of at least two (2) axles,

and" and substituted the word "or" for "and except" which appears before the words "any semitrailer."

Repealing Clause

Section 2 of Ch. 81, Laws 1957 repealed all acts or parts of acts in conflict therewith.

32-21-144. Brakes on motor-driven cycles. (a) The board is authorized to require an inspection of the brake on any motor-driven cycle and to disapprove any such brake which they find will not comply with the performance ability standard set forth in section 140 [32-21-143] or which in their opinion is not so designed or constructed as to insure reasonable and reliable performance in actual use.

(b) The registrar may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it has been determined that the brakes thereon do not comply with the provisions of this section.

(c) No person shall operate on any highway any vehicle referred to in this section in the event the board has disapproved the brake equipment upon such vehicle or type of vehicle.

History: En. Sec. 141, Ch. 263, L. 1955.

**32-21-145. Horns and warning devices.** (a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(d) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by the board, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

**History:** En. Sec. 142, Ch. 263, L. 1955.

**32-21-146. Mufflers, prevention of noise.** (a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cut-out, by-pass, or similar device upon a motor vehicle on a highway.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

**History:** En. Sec. 143, Ch. 263, L. 1955.

**32-21-147. Mirrors.** On and after January 1, 1960, every motor vehicle, shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred (200) feet to the rear of such motor vehicle.

**History:** En. Sec. 144, Ch. 263, L. 1955; amd. Sec. 1, Ch. 113, L. 1959.

to the rear thereof from the driver's position," which appeared after the words "every motor vehicle."

#### **Amendment**

The 1959 amendment added the words "On and after January 1, 1960" and deleted the words "which is so constructed or loaded as to obstruct the driver's view

#### **Repealing Clause**

Section 2 of Ch. 113, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**32-21-148. Windshields must be unobstructed and equipped with wipers.** (a) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.



(b) The windshield on every motor vehicle shall be equipped with a device for clearing rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

**History:** En. Sec. 145, Ch. 263, L. 1955.

**32-21-149. Restrictions as to tire equipment.** (a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d) The commission and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon the highway would otherwise be prohibited under this act.

**History:** En. Sec. 146, Ch. 263, L. 1955.

**32-21-150. Safety glazing material in motor vehicles.** (a) On and after January 1, 1956, no person shall sell any new motor vehicle as specified herein, nor shall any new motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glazing material wherever glazing material is used in doors, windows, and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger busses and school busses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material shall apply to all glazing material used in doors, windows, and windshields in the driver's compartments of such vehicles.

(b) The term "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

**History:** En. Sec. 147, Ch. 263, L. 1955.

**32-21-151. Certain vehicles to carry flares or other warning devices.**

(a) No person shall operate any motor truck of one (1) ton capacity or greater, passenger bus, or truck tractor upon any highway outside the corporate limits of municipalities at any time unless there shall be carried



in such vehicle the following equipment except as provided in paragraph (b):

1. At least three (3) flares or three (3) red electric lanterns or three (3) portable red emergency reflectors each of which shall be capable of being seen and distinguished at a distance of not less than six hundred (600) feet under normal atmospheric conditions at nighttime.

No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to display a minimum of twenty-four (24) square inches of reflective surface, or two (2) reflecting elements; one above the other, either of which shall be capable of reflecting red light clearly visible from all distances within six hundred (600) feet to one hundred (100) feet under normal atmospheric conditions at night when directly in front of lawful upper beams of headlamps.

2. At least three (3) red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried.

3. At least two (2) red-cloth flags, no less than twelve (12) inches square, with standards to support such flags.

(b) No person shall operate at the time and under the conditions stated in paragraph (a) any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gas as a fuel unless there shall be carried in such vehicle three (3) red electric lanterns or three (3) portable red emergency reflectors meeting the requirements of paragraph (a) of this section, and there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame.

**History:** En. Sec. 148, Ch. 263, L. 1955; hour before sunrise" which appeared between the words "time" and "unless."  
amd. Sec. 1, Ch. 108, L. 1957.

#### Amendment

The 1957 amendment in subd. (a) inserted the words "of one (1) ton capacity or greater" and deleted the words "from a half ( $\frac{1}{2}$ ) hour after sunset to a half ( $\frac{1}{2}$ )

#### Repealing Clause

Section 2 of Ch. 108, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**32-21-152. Display of warning devices when vehicle disabled.** (a) Whenever any motor truck, passenger bus, truck, tractor, trailer, semi-trailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in paragraph (b):

1. A lighted fusee, a lighted red electric lantern or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

2. As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three (3) liquid burning flares (pot torches), or three (3) lighted red electric lanterns or three (3) portable red emergency reflectors on the traveled portion of the highway in the following order:

(I) One (1), approximately one hundred (100) feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane.

(II) One (1), approximately one hundred (100) feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.

(III) One (1), at the traffic side of the disabled vehicle not less than ten (10) feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with paragraph (I) of this section, it may be used for this purpose.

(b) Whenever any vehicle referred to in this section is disabled within five hundred (500) feet of a curve, hillcrest, or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than five hundred (500) feet from the disabled vehicle.

(c) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in paragraphs (a) and (e) of this section shall be placed as follows:

One (1) at a distance of approximately two hundred (200) feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one (1) at a distance of approximately one hundred (100) feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; one (1) at the traffic side of the vehicle and approximately ten (10) feet from the vehicle in the direction of the nearest approaching traffic.

(d) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside of any municipality at any time when the display of fusees, flares, red electric lanterns or portable red emergency reflectors is not required, the driver of the vehicle shall display two (2) red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, or at a distance of approximately one hundred (100) feet in advance of the vehicle, and one (1) at a distance of approximately one hundred (100) feet to the rear of the vehicle.

(e) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon any highway of this state at any time or place mentioned in paragraph (a) of this section, the driver of such vehicle shall immediately display the following warning devices: one (1) red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle and two (2) red electric lanterns or portable red reflectors, one (1) placed approximately one hundred (100) feet to the front and one (1) placed approximately one hundred (100) feet to the rear of the disabled vehicle in the center of the traffic

lane occupied by such vehicle. Flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this paragraph.

(f) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of section 148 [32-21-151] applicable thereto.

**History:** En. Sec. 149, Ch. 263, L. 1955.

#### DECISIONS UNDER FORMER LAW

##### Flares on Stalled Truck

Driver of truck was negligent in allowing the truck, which had run out of gas, to stand on highway at nighttime without

placing flares required by Laws 1943, Chapter 199, Section 8. *Burns v. Fisher*, 132 M 26, 313 P 2d 1044, 1048.

**32-21-153. Vehicles transporting explosives.** Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "EXPLOSIVES" in letters not less than eight (8) inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four (24) inches square marked with the word "DANGER" in white letters six (6) inches high.

(b) Every said vehicle shall be equipped with not less than two (2) fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The board is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highway as it shall deem advisable for the protection of the public.

**History:** En. Sec. 150, Ch. 263, L. 1955.

##### Cross-Reference

Other provisions relating to marking vehicles transporting explosives, secs. 69-1925, 69-1926.

**32-21-154. Vehicles without required equipment or in unsafe condition.** No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this act and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

**History:** En. Sec. 151, Ch. 263, L. 1955.

prised Article XV of Ch. 263, Laws 1955 entitled "Inspection of Vehicles."

##### Compiler's Note

Sections 32-21-154 to 32-21-156 com-

**32-21-155. Inspections by officers of the department.** (a) The supervisor, members of the state highway patrol, and such other officers and employees of the department as the supervisor may designate, may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such



vehicle to an inspection and such test with reference thereto as may be appropriate.

(b) In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making such inspection may issue to the driver an official certificate of inspection and approval of such vehicle specifying those parts or equipment so inspected and approved.

(c) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment the officer shall give a written notice to the driver and shall send a copy to the board. Said notice shall specify the deficiencies and require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment within five (5) days.

**History:** En. Sec. 152, Ch. 263, L. 1955.

**32-21-156. Owners and drivers to comply with inspection laws.** (a) No person driving a vehicle shall refuse to submit such vehicle to an inspection and test when required to do so by the supervisor or an authorized officer or employee of the department.

(b) Every owner or driver, upon receiving a notice as provided in section 152 [32-21-155], shall comply therewith and shall within five (5) days have the deficiencies corrected and shall forward notification of such correction to the board. In lieu of compliance with this paragraph the vehicle shall not be operated, except as provided in the next succeeding paragraph.

(c) No person shall operate any vehicle after receiving a notice with reference thereto as above provided, except as may be necessary to return such vehicle to the residence or place of business of the owner or driver, if within a distance of twenty (20) miles, or to a garage, until said vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this act.

**History:** En. Sec. 153, Ch. 263, L. 1955.

**32-21-157. Penalties for misdemeanor.** (a) It is a misdemeanor for any person to violate any of the provisions of this act unless such violation is by this act or other law of this state declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this act for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) or by imprisonment for not more than ten (10) days; for a second conviction within one (1) year thereafter such person shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or by imprisonment for not more than six (6) months or by both fine and imprisonment.



(c) On failure of payment of fines, the offender, in cases of misdemeanor, shall be imprisoned in the county jail in the county in which the offense has been committed, and said imprisonment shall be computed upon the basis of two dollars (\$2.00) of said fine for each day's incarceration.

(d) Upon conviction the court costs, or any part thereof, may also be assessed against the defendant in the discretion of the court.

**History:** En. Sec. 154, Ch. 263, L. 1955. Ch. 263, Laws 1955 entitled "Penalties and Disposition of Fines and Forfeitures."

**Compiler's Note**

This section comprised Article XVI of

**32-21-158. Uniformity of interpretation.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** En. Sec. 155, Ch. 263, L. 1955. 1955 entitled "Effect of and Short Title of Act."

**Compiler's Note**

Sections 32-21-158 to 32-21-160 comprised Article XVII of Ch. 263, Laws

**32-21-159. Short title.** This act may be cited as the Uniform Act Regulating Traffic on Highways.

**History:** En. Sec. 156, Ch. 263, L. 1955.

**32-21-160. Constitutionality.** If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional.

**History:** En. Sec. 157, Ch. 263, L. 1955. 32-1104, 32-1105, 32-1106, 32-1107, 32-1108, 32-1109, 32-1111, 32-1132, 32-1133, 32-1134, 32-1135, 32-1136, 32-1137, 32-1138, 32-1139, 32-1140, 32-1141, 32-1142, 32-1146, 32-1611, 32-1612, 69-1913, 69-1915, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

**Repealing Clause**

Section 158 of Ch. 263, Laws 1955 read "Repeal. That sections 31-107, Revised Codes of Montana, 1947, as amended by section 1, chapter 94, Laws of 1949, 31-108, Revised Codes of Montana, 1947, as amended by section 1, chapter 118, Laws of 1949, 31-109, 32-801, 32-802, 32-803, 32-804, 32-805, 32-806, 32-1011, 32-1015, 32-1017, 32-1101, 32-1102, 32-1103, Revised Codes of Montana, 1947, as amended by section 1, chapter 70, Laws of 1949,

**Effective Date**

Section 159 of Ch. 263, Laws 1955 read "Time of Taking Effect. This act shall be in full force and effect from and after July 1, 1955."

**32-21-161. Commercial tow car requirements.** Every commercial tow car used to tow a vehicle by means of a crane, hoist, tow bar, tow line, or dolly shall:

(a) Be equipped with and carry not less than two (2) red flares or two (2) red lanterns or two (2) warning lights or reflectors, which reflectors shall be of a type approved by the Montana highway patrol board.

(b) Be equipped with at least two (2) highway warning signs of a uniform type prescribed by the Montana highway patrol board and shall be so designed as to be visible both day and night. The operator of a commercial tow car used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction

of any portion of the roadway outside a business or residence district, place a highway warning sign two hundred (200) feet in advance of and two hundred (200) feet to the rear of the disabled vehicle, except as otherwise provided in this section. When a motor vehicle is disabled on the highway, such tow car operator called to render assistance during the hours of darkness shall immediately upon arrival place warning signs upon the highway as prescribed in this section and in addition thereto shall place not less than one (1) red flare, red lantern or warning light or reflector in close proximity to each warning sign.

(c) Be equipped with and carry a fire extinguisher of at least two (2) quart capacity of a type capable of extinguishing a fire.

(d) Be equipped with a lamp emitting a flashing or steady red light mounted on top of the cab of the tow car or on the top of the crane or hoist if such light can be seen from the front of the tow car. The light from such lamp must be visible for a distance of one thousand (1,000) feet under normal atmospheric conditions, and shall be mounted in such a manner that it can be securely fastened with the lens of the lamp facing the rear of the tow car upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow car may unfasten the red light and place it in any position deemed advisable to warn approaching drivers. When the disabled vehicle is ready for towing the red light must be turned to rear of the tow car upon which it is mounted and securely locked in this position. Additional red lights of an approved type may be displayed at either or both sides of the tow car as the case may warrant during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) Be equipped with one (1) or more brooms and the operator of the tow car engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle which is to be towed.

(f) Be equipped with and carry a shovel and whenever practical the tow-car operator engaged to remove any disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by such disabled vehicle.

(g) Be equipped with and carry a portable electrical extension cord for use in displaying a light on the rear of the disabled vehicle. The length of such extension cord shall not be less than the length of the combined vehicles and whenever a disabled vehicle is towed during the hours of darkness and the rear lamp or lamps on the disabled vehicle cannot be lighted, the tow car operator shall provide for such rear light by means of the extension cord herein referred to.

The owner or operator of a commercial tow car who complies with the requirements of this section may stop or park such tow car upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

**History:** En. Sec. 1, Ch. 201, L. 1959.

**Title of Act**

An act to require commercial tow cars to be equipped with lights and warning

devices for the protection of motorists; by prescribing the procedure for mounting and displaying such lights and warning devices; by providing that the operators of commercial tow car must clean

debris from roadway at accident scenes; by providing for warning devices on disabled vehicles being towed during hours of darkness; by fixing penalty for violation of act; by repealing all acts or parts of acts in conflict herewith.

**32-21-162. Penalty.** Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and subject to a penalty not to exceed one hundred dollars (\$100.00).

**History:** En. Sec. 2, Ch. 201, L. 1959. repealed all acts or parts of acts in conflict therewith.

**Repealing Clause**

Section 3 of Ch. 201, Laws 1959 re-

**32-21-163. Unlawful operation by child under eighteen—exclusive jurisdiction of district court—penalties—impounding of vehicle, when.** The district courts of the state of Montana shall have exclusive original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars (\$50.00), (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

**History:** En. Sec. 1, Ch. 215, L. 1959.

**Title of Act**

An act vesting in district courts the exclusive jurisdiction of proceedings involving unlawful operation of motor vehicles by persons under eighteen (18) years of age; providing penalties for unlawful operation of motor vehicles by persons under eighteen (18) years of age;

providing for the issuance of summons and for further proceedings before the district court relating to unlawful operation of motor vehicles by persons under eighteen (18) years of age, and relating to enforcement of penalties imposed in such proceedings; and providing for an effective date and repealing all acts in conflict herewith.

**32-21-164. Summons—issuing to child under eighteen.** Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court of the county wherein the offense occurs; and the court shall be informed thereof

by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the district judge.

**History:** En. Sec. 2, Ch. 215, L. 1959.

**32-21-165. Court learning of unlawful operation by child under eighteen—authority.** Whenever the court shall be informed that a child has unlawfully operated a motor vehicle said child shall be required to appear before the court and the court shall, after a hearing and investigation, take action as provided in section 1 [32-21-163] hereof, or may dismiss the proceeding if it be found and determined that it is for the best interests of the child so to do.

**History:** En. Sec. 3, Ch. 215, L. 1959.

**Effective Date**

**Repealing Clause**

Section 5 of Ch. 215, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Section 4 of Ch. 215, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.



## TITLE 35—HOUSING

- Chapter 1. Housing authorities law, 35-103, 35-103.1, 35-104, 35-109, 35-123, 35-125 to 35-125.2.  
4. Emergency war and veterans' housing facilities, 35-408 to 35-414.

### CHAPTER 1—HOUSING AUTHORITIES LAW

- Section 35-103. Definitions.  
35-103.1. Low rent housing for elderly families.  
35-104. Notice, hearing and creation of authority.  
35-109. Powers of authority.  
35-123. Contracts with federal government.  
35-125. Additional powers of authority.  
35-125.1. Payments by housing authorities to local bodies.  
35-125.2. Act controlling.

**35-103. (5309.3) Definitions.** The following terms, wherever used or referred to in this act shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (1). \* \* \* [Same as parent volume.]  
(2) "City" shall mean any city which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.  
(3) and (4). \* \* \* [Subdivisions (3) and (4), same as parent volume.]  
(5) "Municipality" shall mean any city, town or incorporated village, which is located within the territorial boundaries of an authority.  
(6) to (17). \* \* \* [Subdivisions (6) to (17), same as parent volume.]  
(18) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.  
(19) "Elderly families" shall mean families the head of which (or his spouse) is sixty-five years of age or over and who otherwise qualify as "persons of low income" within the meaning of the definition set forth in (18) above.

**History:** En. Sec. 3, Ch. 140, L. 1935;  
amd. Sec. 1, Ch. 193, L. 1957.

#### **Amendment**

The 1957 amendment in subd. (2) substituted the words "any city" for the words

"the city of the first or second class"; in subd. (5) deleted the words "other than the city as defined above" which appeared after the word "village" and added subds. (18) and (19).

**35-103.1. Low rent housing for elderly families.** For the purpose of increasing the supply of low-rent housing for elderly families, an authority may develop, construct and operate new housing or acquire, remodel and operate existing housing in order to provide accommodations designed specifically for such elderly families; provided, that any application of the authority for federal financial assistance for such housing for elderly families shall first be approved by the council by resolution duly adopted. Notwithstanding the provisions of this or any other law, an authority, in respect to dwelling units suitable to the needs of elderly families, may extend a prior preference in occupancy to such elderly families; provided,

that an authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority.

**History:** En. 35-103.1 by Sec. 2, Ch. 193,  
L. 1957.

**35-104. (5309.4) Notice, hearing and creation of authority.** Any twenty-five (25) residents of a city and of the area within ten (10) miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten (10) days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area or, if there be no such newspaper, by posting such a notice in at least three (3) public places within the city, at least ten (10) days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

- (1) Whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or
- (2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council must draft an ordinance authorizing the mayor to appoint five (5) commissioners to act as an authority, which said ordinance shall not be effective until it has been approved by a majority vote of the electors within the city limits voting, either at a special or general election. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of the state an application signed by them, which shall set forth (without any detail other than the mere recital) (1) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners; (2) the name, and official residence of each of the commis-

sioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this act; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners, a certificate of incorporation pursuant to this act, under the seal of the state, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten (10) miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for such authority to exercise its powers within that city. In case an area lies within ten (10) miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state. No housing authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority. •

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three (3) months shall have expired from the date of the denial of any such petition, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceedings involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state shall be admissible in evidence in any such suit, action



or proceeding, and shall be conclusive proof of the filing and contents thereof.

**History:** En. Sec. 4, Ch. 140, L. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957.

#### Amendment

The 1957 amendment in the first sentence of the ninth paragraph substituted the words "unless a resolution shall have

been adopted by the governing body of such other city declaring that there is a need for such authority to exercise its powers within that city" for the words "nor any area included within the boundaries of another authority" and in the same paragraph inserted the sentence "No housing authority shall operate \* \* \*."

**35-109. (5309.9) Powers of authority.** An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or unsanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe, or unsanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city, municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, options or property rights or for the furnishing of property or services in connection with a project;

To arrange with the state, its subdivision and agencies, and any county, city or municipality of the state, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government;



To acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project;

To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this act; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;

To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority to make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this act, to carry into effect the powers and purposes of the authority;

To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

To issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

Any of the investigations or examinations provided for in this act may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions.

An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, includ-

ing any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this act. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Before any housing projects or additional units to existing housing projects shall be undertaken by an authority or a contract with the federal government shall be executed therefor, the city or town council must pass an ordinance authorizing the same, and said ordinance shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting either at a special or general election. Provided, however, that provisions on elections herein contained shall not be applicable to repair, maintenance, painting or remodeling of existing units nor to applications on file with the public housing administration on the effective date of this act.

**History:** En. Sec. 9, Ch. 140, L. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957.

**Amendment**

The 1957 amendment inserted the words "by an authority" and "with the federal government shall" in the first sentence of the last paragraph.

**35-123. (5309.23) Contracts with federal government.** In addition to the powers conferred upon the authority by other provisions of this act, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this act to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. In any contract with the federal government for annual contributions to an authority, the authority may obligate itself (which obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws) to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the authority is subject; such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project in accordance with the terms of such contract; provided, that the contract requires that, as soon

as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted. It is the purpose and intent of this act to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this act to undertake.

**History:** En. Sec. 23, Ch. 140, L. 1935; amd. Sec. 5, Ch. 193, L. 1957.

**Amendment**

The 1957 amendment inserted the second sentence beginning "In any contract with the federal government \* \* \*."

**35-125. (5309.25) Additional powers of authority.** A housing authority shall have the power (notwithstanding anything to the contrary contained in this act or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to the financial aid of the project.

**History:** En. Sec. 25, Ch. 140, L. 1935; amd. Sec. 4, Ch. 153, L. 1941; amd. Sec. 6, Ch. 193, L. 1957.

**Amendment**

The 1957 amendment inserted after the statement in parentheses the words "to agree to any conditions attached to federal financial assistance relating to the deter-

mination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and"; inserted "salaries or" between "minimum" and "wages" and substituted "the" for "its" before the word "financial."

**35-125.1. Payments by housing authorities to local bodies.** Notwithstanding any limitations in this or any other law, any housing authority may agree to make such payments to the county, city or municipality, the state, or any political subdivision or agency thereof (which payments such bodies are hereby authorized to accept) as the authority finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this housing authorities law.

**History:** En. Sec. 35-125.1 by Sec. 7, Ch. 193, L. 1957.

**35-125.2. Act controlling.** Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

**History:** En. Sec. 9, Ch. 193, L. 1957.

**Severability Clause**

Section 8 of Ch. 193, Laws 1957 read "Notwithstanding any other evidence of legislative intent, it is hereby declared to

be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as



to which it is held invalid, shall not be affected thereby."

#### Repealing Clause

Section 10 of Ch. 193, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 11 of Ch. 193, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

### CHAPTER 4—EMERGENCY WAR AND VETERANS' HOUSING FACILITIES

Section 35-408. Purpose.

35-409. Definitions.

35-410. Authority of local agencies to acquire housing.

35-411. Administration of housing facilities.

35-412. Exemption from rental and tenant selection provisions of housing authority law.

35-413. Prior acts validated.

35-414. Termination of operation.

**35-408. Purpose.** It is hereby declared that there exists a housing shortage in the state of Montana. That of the hundreds of veterans dismissed from the military service, many of such veterans and other persons are still unable to find adequate housing for themselves or their families, and by reason thereof are being compelled to live in unsafe, unsanitary and congested dwellings. That by virtue of the Housing Act of 1950, being Title II, Chapter 94, Public Law 475 of the laws of the Eighty-first Congress Second Session, war and veterans' housing projects constructed in the state of Montana by federal government will be destroyed and removed unless otherwise provided for. That the adoption of this act will enable many veterans and their families to maintain their status in the community and conduct their employment without worry as to the health, sanitary conditions and welfare of their families.

**History:** En. Sec. 1, Ch. 9, L. 1955.

#### Compiler's Note

Chapter 9 of Laws 1955 contained a preamble which read as follows:

"WHEREAS, the Thirty-second Legislative Assembly of the state of Montana in the year 1951 did enact into law chapter 41 of the Session Laws of said assembly providing for the acquisition and operation of temporary and emergency war and veterans' housing facilities by local agencies, and

"WHEREAS, by the terms and provisions of chapter 41 of the Session Laws

of 1951, it is provided that in no event shall housing facilities be operated and maintained by any local agency after the first day of May, 1955, and

"WHEREAS, if permitted to expire, great hardship will result to veterans and their families now unable to find other accommodations."

#### Title of Act

An act to provide for the operation of temporary and emergency war and veterans' housing facilities by local agencies.

**35-409. Definitions.** The following terms, whenever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Local agency" means any county, city, town, school district, or housing authority of the state.

(2) "Housing" means any temporary war or veterans' housing acquired from the United States of America under the terms and provisions of the Housing Act of 1950, being Title II, Chapter 94, Public Law 475, of the laws of the Eighty-first Congress, Second Session, for the purpose



of providing temporary housing for veterans and for families of servicemen, located within the boundaries of any local agency.

(3) "Veterans" includes, in so far as permitted by federal law, any person who has served in the military or naval forces of the United States and has been discharged or released therefrom under conditions other than dishonorable.

(4) "Families of servicemen" includes, in so far as permitted by federal law, the families of any person who is serving in the military or naval forces of the United States, and the unmarried widow of a deceased veteran.

(5) "Families" is limited to the spouse and legal dependents who are members of the household.

**History:** En. Sec. 2, Ch. 9, L. 1955.

**35-410. Authority of local agencies to acquire housing.** For the purposes of this act, any local agency may expend or use its funds and employ its personnel to do anything necessary to maintain housing acquired under the terms of the Federal Public Housing Act of 1950, and may remodel, repair, or remove and re-erect such housing facilities, but shall not erect or construct new housing facilities. The local agency may also provide for the installation of necessary appurtenances and utilities. For the purposes of this act, any local agency may enter into agreements with the federal government pursuant to the Housing Act of 1950.

**History:** En. Sec. 3, Ch. 9, L. 1955.

**35-411. Administration of housing facilities.** The local agency shall administer any housing facility acquired pursuant to this act and shall let or lease accommodations therein to veterans and families of servicemen upon such terms and for such rentals as is reasonable, but in such manner as to secure, in so far as practical, a return of the investments made by it; provided, however, that before any return of investments in such housing shall accrue to any housing authority there shall first be paid to any state and/or political subdivision thereof, annual sums in lieu of taxes which amounts so paid for any year, upon such property, shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such further allowances as may be considered to be appropriate for expenditures by the government for streets, utilities or other public services to serve such property.

**History:** En. Sec. 4, Ch. 9, L. 1955.

**35-412. Exemption from rental and tenant selection provisions of housing authority law.** In providing housing for veterans and other families, single veterans, and families of servicemen, pursuant to the provisions of this act, a housing authority shall not be subject to any of the provisions of the housing authority law relating to rentals and tenant selection.

**History:** En. Sec. 5, Ch. 9, L. 1955.

**35-413. Prior acts validated.** Any and all contracts, undertakings, and commitments, together with acts and proceedings in respect thereto, here-

tofore done or undertaken by any local agency for the provisions of housing for veterans and their families or single veterans and families of servicemen are hereby validated and declared legal.

**History:** En. Sec. 6, Ch. 9, L. 1955.

**35-414. Termination of operation.** The operation and maintenance of any housing facility acquired pursuant to this act may be terminated at any time if consistent with the terms of the federal act under which it was acquired, or if the legislature determines that the necessity therefor no longer exists, but in no event shall such housing facility be operated and maintained by any local agency after the first day of May, 1961.

When any housing facility is discontinued, in whole or in part, it shall be liquidated in such manner as will secure the greatest return to the local agency; provided, however, that any lands acquired under this act may be retained by the local agency. The term "liquidated" as used in this section, in so far as the same pertains to any temporary housing facility dwelling structures, shall mean and include dismantling, and disposal thereof by the local agency for purposes other than a dwelling place for human beings.

**History:** En. Sec. 7, Ch. 9, L. 1955;  
amd. Sec. 1, Ch. 17, L. 1959.

**Amendment**

The 1959 amendment substituted 1961 for 1959.

**Repealing Clause**

Section 8 of Ch. 9, Laws 1955 and Sec. 2 of Ch. 17, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Effective Dates**

Section 9 of Ch. 9, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 1, 1955.

Section 3 of Ch. 17, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 6, 1959.

## TITLE 38—INSANE AND FEEBLE MINDED

- Chapter 1. The Montana state hospital—management, 38-111.
2. Examination of persons mentally deranged—commitment, 38-208.2, 38-208.3, 38-209, 38-211, 38-214.
  4. Examination and commitment of person as mentally deranged but not dangerous—voluntary application for admission, 38-410 to 38-412.
  5. Parole of patients, 38-502 to 38-507.
  7. State hospital for inebriates, 38-707, 38-708.
  8. Montana state training school and hospital, 38-801, 38-809, 38-809.1, 38-812.
  11. Home for senile men and women, 38-1106, 38-1108.

### CHAPTER 1—THE MONTANA STATE HOSPITAL—MANAGEMENT

Section 38-111. Periodic medical examination.

**38-111. Periodic medical examination.** It shall be the duty of the hospital medical staff to examine patients who have curable diseases every six months.

**History:** En. Sec. 3, Ch. 165, L. 1943; amd. Sec. 1, Ch. 153, L. 1957.

mitted, and the name and address of at least one of the relations of the patient if such can be ascertained."

#### Amendment

The 1957 amendment deleted from the end of this section the words "and file a written report with the board giving the name of the patient and the name of the place from which the patient was com-

#### Repealing Clause

Section 2 of Ch. 153, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED—COMMITMENT

Section 38-208.2. Legal commitment within 5 days after emergency admission.

38-208.3. Cost of commitment proceedings.

38-209. Delivery of insane person at state hospital.

38-211. Fees of physicians.

38-214. Hearing and examination of insane person—maintenance—contribution by relatives—when had.

**38-201. (1431) Examination before magistrate—affidavit and warrant, etc.**

#### References

Cited or applied in State v. Kitchens, 129 M 331, 286 P 2d 1079, 1080.

**38-208.2. Legal commitment within 5 days after emergency admission.** Within five (5) days after the admission to the state hospital of patients who have not been legally committed as hereinbefore provided, the superintendent or acting superintendent of said hospital shall have such patients legally committed thereto by the district court of the third judicial district of the state of Montana in and for the county of Deer Lodge or shall release and discharge such patients from said hospital, if, by reason of the absence of the district judge of the third judicial district of the state of Montana, in and for the county of Deer Lodge, or, if a jury trial is being held by such district judge, and prevents the handling of said matter as aforementioned, the patient shall be legally

committed as soon after the return of the district judge as possible, or as soon as the district judge is available to attend to such admission.

**History:** En. Sec. 2, Ch. 182, L. 1953; amd. Sec. 1, Ch. 92, L. 1957.

#### **Amendment**

The 1957 amendment added all that portion of this section beginning with the words "if, by reason of the absence of the district judge \* \* \*" to end of section.

#### **Repealing Clause**

Section 2 of Ch. 92, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**38-208.3. Cost of commitment proceedings.** In all cases provided for by this act the costs of commitment proceedings shall be paid by the county of the patients' residences, and, after the order of commitment has been signed by the district judge of the third judicial district of the state of Montana, in and for the county of Deer Lodge, said order and all other papers relative to the commitment of said person shall be forwarded by the clerk of the district court in and for the county of Deer Lodge, to the clerk of the district court of the county of the patients' residences, or of the county from which the patient has been sent to the state hospital, and shall be placed on record and filed in that office, and shall not be placed on record and filed in the office of the clerk of the district court of Deer Lodge County, unless the patient is a resident of, or has been sent from Deer Lodge County.

**History:** En. Sec. 3, Ch. 182, L. 1953; amd. Sec. 1, Ch. 77, L. 1955; amd. Sec. 1, Ch. 127, L. 1957.

#### **Amendments**

The 1955 amendment substituted the words "patient's residence" for the words "patients' residences" and added the exception clause.

The 1957 amendment substituted the words "patients' residences" for the words "patient's residence" and the words "and, after the order of commitment has been

signed \* \* \*" to end of section for the exception clause added by 1955 amendment which read "except that when the state hospital cannot determine the legal residence, the costs shall be paid by the county from which the certificate of the county physician is issued."

#### **Repealing Clauses**

Section 2 of Ch. 77, Laws 1955 and Sec. 2 of Ch. 127, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**38-209. (1439) Delivery of insane person at state hospital.** The insane person, together with the order of the judge, and the certificate of the physicians must be delivered to the sheriff of the county in which said order is made, or to a responsible relative or friend, as determined by the judge who signs said order, and by him must be delivered to the officer in charge of the Montana state hospital. The superintendent or person in charge of the state hospital for the insane may refuse to receive any person upon any order, if the papers presented do not comply with the provisions of this chapter.

**History:** Ap. p. Sec. 2308, Pol. C. 1895; amd. Sec. 5, p. 164, L. 1897; re-en. Sec. 1142, Rev. C. 1907; re-en. Sec. 1439, R. C. M. 1921; amd. Sec. 5, Ch. 117, L. 1939; amd. Sec. 1, Ch. 181, L. 1957. Cal. Pol. C. Sec. 2172.

#### **Amendment**

The 1957 amendment inserted the words

"in which said order is made, or to a responsible relative or friend, as determined by the judge who signs said order" in the first sentence.

#### **Repealing Clause**

Section 2 of Ch. 181, Laws 1957 repealed all acts and parts of acts in conflict therewith.



**38-211. (1441) Fees of physicians.** The physicians attending each examination of an insane person are allowed each such fee as may be fixed and determined by the court and in addition their actual traveling expenses, not to exceed the sum of ten cents (10¢) for each and every mile actually and necessarily traveled by said physician in attending said examination, and in returning to his home therefrom, to be paid by the county treasurer of the county, where the examination was had, on the order of the judge.

The clerk of the district court must give to such physician a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated from the county treasurer.

**History:** Ap. p. Sec. 2310, Pol. C. 1895; re-en. Sec. 1144, Rev. C. 1907; amd. Sec. 1, Ch. 84, L. 1911; re-en. Sec. 1441, R. C. M. 1921; amd. Sec. 7, Ch. 117, L. 1939; amd. Sec. 1, Ch. 134, L. 1957.

determined by the court" for the words "five dollars" in the first paragraph.

#### **Effective Date**

Section 2 of Ch. 134, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

#### **Amendment**

The 1957 amendment substituted the words "each such fee as may be fixed and

**38-214. (1444) Hearing and examination of insane person—maintenance—contribution by relatives—when had.** (1) When the judge has fixed the time for hearing and examination, as provided in section 38-201, the clerk of court must immediately deliver to the county board of public welfare a written notice giving the name of person named in the affidavit and warrant, his place of residence, and the name of the person making the affidavit, and some member of the staff of such board must within thirty (30) days after the notice is served on the board make an investigation to ascertain and determine the financial condition of the person named in such affidavit and warrant, the property and value thereof, if any be owned by such person, the income, if any, therefrom, names of relatives, if any, legally liable for the support and maintenance of such person, and their financial condition and ability to pay the cost of such proceeding, transportation to the Montana state hospital, and care and maintenance of such person therein, and shall make a written report of such investigation and file the same with the clerk of the court and serve a copy of the report upon the superintendent of the Montana state hospital.

(2) It shall be the duty of the judge, before whom the sanity hearing is had, to take evidence as to the financial worth of said person, the property and value thereof owned by him, if any, and the income, if any therefrom, and the financial condition and ability of any and all persons legally liable for his support and maintenance to pay the costs of such proceeding, transportation to the state hospital and care and maintenance of such person therein, and when the report of the member of the staff of the county public welfare board making the aforesaid investigation has been filed in the office of the clerk of the court it shall be considered and deemed a part of such evidence. All evidence introduced shall be reduced to writing and filed in the office of the clerk of said court, together with all orders, subpoenas, affidavits, complaints, warrants and papers used on said hearing or made by said judge, and said clerk shall enter upon the journal of the minutes of probate proceedings a record of all proceedings

had, in the same manner as proceedings in probate. Copies of all the evidence relating to the financial condition of the person shall be sent to the superintendent of the Montana state hospital.

(3) If, after all of the evidence, including the welfare report has been filed as aforementioned, it appears from said evidence that such person has any means, money or property out of which the costs of the proceeding, transportation to the state hospital and his maintenance therein, or any part thereof could be paid, it shall be the duty of the judge before whom such hearing is had, to issue a citation to any person or persons in possession of such property, or any thereof, and to the relatives of such person, if any there be in the county of which such person is a resident, citing them to appear and show cause why a guardian should not be appointed for such person, and why said guardian should not be ordered to pay the costs of such proceeding, transportation to the state hospital and cost of the maintenance of such person, or so much thereof as his means will permit, which citation shall be served and all proceedings thereunder conducted as provided by sections 91-4301 to 91-4322, and if it appears to the court that such person has property that can be applied towards the payment of the costs of the proceeding, transportation to the state hospital and his maintenance therein, it shall be the duty of the court to make an order to that effect, stating how much of such person's property shall be so applied, the amount to be fixed with due regard to the proper preservation of the estate of such person, provided that the amount fixed for the maintenance of such person in such hospital shall not, in any event, exceed the sum of three dollars (\$3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter shall not exceed the sum of two dollars (\$2.00) per day. If it appears to the court that such person has no means, money or property, or not sufficient means, money or property, to pay the costs of the proceeding, transportation to the state hospital and his maintenance therein, but has relatives who are legally liable for his maintenance and support, and upon whom citation has been served as herein provided, who are financially able to pay such costs of proceedings, transportation and maintenance, or a part thereof, it shall be the duty of the court to make an order to that effect, stating therein the names of such relatives, and requiring them to pay such costs of proceedings, transportation and maintenance, in such hospital, or so much thereof as may be fixed in such order; provided that the amount fixed for the maintenance of such person in such hospital shall not, in any event, exceed the sum of three dollars (\$3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter shall not exceed the sum of two dollars (\$2.00) per day.

(4) If it appears to the court that such person is an indigent and has no relatives legally liable for his support and maintenance the court shall make an order so stating and that such person is to be received at such hospital as an indigent person. Provided, however, that in the event any such person so admitted as a patient under the provision of this act as an indigent person shall thereafter be found not to have been indigent, or shall come into an estate of inheritance, or acquire property of any kind, or be

the recipient, or entitled to the receipt, of any income of any nature, trust or otherwise, that in any of such event, while the person remains a patient at the state hospital, the state of Montana shall be entitled to recover the cost and care for the maintenance of said patient from any of such assets owned, earned or accruing to said patient, and provided further that after dismissal as a patient, any such recovery shall apply only against an estate of inheritance.

(5) Whenever any order is made by the court directing the payment of the costs of proceeding, transportation and maintenance or any part thereof of any person out of the estate of such person, or by any relatives thereof legally liable for his support and maintenance, such order must be filed in the office of the clerk of the court and such court must make duplicate certified copies thereof, delivering one thereof to the board of county commissioners of such county and transmitting the other thereof to the superintendent of the Montana state hospital.

**History:** En. Sec. 8, p. 165, L. 1897; re-en. Sec. 1147, Rev. C. 1907; re-en. Sec. 1444, R. C. M. 1921; amd. Sec. 9, Ch. 117, L. 1939; amd. Sec. 3, Ch. 76, L. 1943; amd. Sec. 1, Ch. 49, L. 1955; amd. Sec. 1, Ch. 131, L. 1959. Cal. Pol. C. Secs. 2179-2180.

#### Amendments

The 1955 amendment in subd. (1) substituted the words "within thirty (30) days after the notice is served on the board" for the words "without delay" and the words "and serve a copy of the report upon the superintendent of the Montana state hospital" for the words "prior to the time set for such hearing and examination"; deleted from the beginning of subd. (2) the words "On the hearing and examination, if the person is adjudged to be insane and an order is made committing him to the state hospital, or if it is adjudged that there is reason to believe that his mind is disordered to such an extent that he should be placed in hospital for observation for the purpose of ascertaining and determining his condition of mind and whether he should be committed to such hospital and an

order is made therefor," made several minor changes throughout subd. (2) and added the present last sentence; in the beginning of subd. (3) between the words "If" and "it" inserted the following "after all of the evidence, including the welfare report has been filed as aforementioned," and substituted the words "the sum of three dollars (\$3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter shall not exceed the sum of two dollars (\$2.00) per day" for the words "one dollar (\$1.00) per day" both times they appear; subd. (5) above was formerly part of subd. (4).

The 1959 amendment added the proviso to subd. (4).

#### Repealing Clauses

Section 2 of Ch. 49, Laws 1955 and Sec. 2 of Ch. 131, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 131, Laws 1959 provided the act should be in effect from and after its full passage and approval. Approved March 5, 1959.

### CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

Section 38-410. Determination of financial ability—procedure.

38-411. Maximum charges.

38-412. Later commitment—court to make order relative to charges.

**38-410. Determination of financial ability—procedure.** At the time the judge makes his order directing that a person who has signed a voluntary application for admission to the Montana state hospital be admitted to said hospital he shall follow the same procedure relative to determining the financial ability of such person as set forth in section 38-214 and the



clerk of the district court and the county board of public welfare shall also follow the same procedure as set forth in section 38-214.

**History:** En. Sec. 1, Ch. 129, L. 1955.

**Title of Act**

An act to provide for the payment of the cost of care and maintenance at the

Montana state hospital by those who make a voluntary application for admission to the Montana state hospital and fixing the amount to be charged therefor.

**38-411. Maximum charges.** The charge for the cost of care and maintenance of a person who is admitted to the Montana state hospital as a voluntary applicant shall not exceed the following amounts: Three dollars (\$3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter not to exceed the sum of two dollars (\$2.00) per day.

**History:** En. Sec. 2, Ch. 129, L. 1955.

**38-412. Later commitment—court to make order relative to charges.** Should a voluntary applicant later be committed to the Montana state hospital by an order made by a district judge under the provisions of section 38-405 or section 38-406, he shall again make an order relative to the charges for the cost of care and maintenance in accordance with the aforementioned investigation and report and all the evidence submitted at the hearing on the voluntary application.

**History:** En. Sec. 3, Ch. 129, L. 1955.

pealed all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 4 of Ch. 129, Laws 1955 re-

## CHAPTER 5—PAROLE OF PATIENTS

- Section 38-502. Convalescent leave of patients from Montana state hospital.  
 38-503. Permitting patient to leave.  
 38-504. Termination of convalescent leave.  
 38-505. Report by person under whom patient is placed on convalescent leave.  
 38-506. Support of patient placed on convalescent leave, discharged by lapse of time.  
 38-507. Clothing for patient on convalescent leave or discharged patient.

**38-502. Convalescent leave of patients from Montana state hospital.** The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state board of commissioners for the insane.

**History:** En. Sec. 2, Ch. 145, L. 1941; words "convalescent leave" for the word amd. Sec. 1, Ch. 152, L. 1957. "parole."

**Amendment**

The 1957 amendment substituted the

**38-503. Permitting patient to leave.** A patient of the Montana state hospital may be permitted by the superintendent to leave the institution on convalescent leave and remain in the custody of a parent, relative, legal guardian or other person.

**History:** En. Sec. 3, Ch. 145, L. 1941; words "convalescent leave" for the word amd. Sec. 2, Ch. 152, L. 1957. "parole."

**Amendment**

The 1957 amendment substituted the



**38-504. Termination of convalescent leave.** All such patients, while on convalescent leave, shall remain in the legal custody, and under the control of the state board of commissioners for the insane, and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state board of commissioners for the insane, that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state board of commissioners for the insane, certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital.

**History:** En. Sec. 4, Ch. 145, L. 1941; words "convalescent leave" for the word  
amd. Sec. 3, Ch. 152, L. 1957. "parole" each time they appear.

**Amendment**

The 1957 amendment substituted the

**38-505. Report by person under whom patient is placed on convalescent leave.** The person to whom such person shall be placed on convalescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state board of commissioners for the insane may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital.

**History:** En. Sec. 5, Ch. 145, L. 1941; words "placed on convalescent leave" for  
amd. Sec. 4, Ch. 152, L. 1957. the word "paroled."

**Amendment**

The 1957 amendment substituted the

**38-506. Support of patient placed on convalescent leave, discharged by lapse of time.** The Montana state hospital placing a patient on convalescent leave as aforesaid shall not be liable for his support while on convalescent leave. Such liability shall devolve upon the legal guardian, parent, or person or persons under whose care the patient is placed on convalescent leave, or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found, shall be responsible for providing relief and care for such patient on convalescent leave who is unable to maintain himself, or who is unable to secure support from the person under whose care he was placed on convalescent leave, as for any other person in need of relief and care, under the provisions of the public welfare laws. The person under whose care the patient is placed on convalescent leave or any other person legally liable for his support, shall, if such convalescent leave be revoked, be liable for any expense incurred by the state or county in procuring the return of such patient to the hospital.

The superintendent of the Montana state hospital shall have the power and it shall be his duty to place on convalescent leave any patient under his control when he believes it to be for the best interests of such patient and society to do so. If any patient so placed on convalescent leave shall not be returned to said institution within a period of two (2) years there-

after, he shall be deemed discharged therefrom and entry shall be made accordingly in the records of the institution; and if any patient who has escaped from said institution shall not be returned thereto within two (2) years thereafter, he shall be deemed discharged therefrom and an entry made accordingly in the records of said institution. Whenever a patient shall be discharged whether by convalescent leave continuing for a period of two (2) years or by having escaped and not having been returned within two (2) years, the superintendent of the Montana state hospital shall immediately notify in writing the judge of the court by which said patient was committed and no person so discharged shall be recommitted to the state hospital except by court order and upon proceedings as required by law for commitment in the first instance. Provided, however, that nothing herein contained shall be construed as a restoration of civil rights of persons so discharged or as a restoration to sanity, or to relieve the superintendent of the Montana state hospital from the obligation of supervising patients on convalescent leave to the extent of available facilities and finances.

**History:** En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957.

#### **Amendment**

The 1957 amendment throughout this section substituted the words "on convalescent leave" and "placed on convalescent leave" for the words "parole" and

"paroled"; in the first sentence substituted the word "placing" for the word "paroling," and inserted the words "on convalescent leave" between the words "patient" and "as"; in the second sentence substituted the word "under" for the word "to" and in the third and fourth sentences substituted the word "under" for the word "in."

**38-507. Clothing for patient on convalescent leave or discharged patient.** No patient or inmate shall be discharged or placed on convalescent leave from the Montana state hospital without suitable clothing adapted to the season in which he is discharged.

**History:** En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957.

words "placed on convalescent leave" for the word "paroled."

#### **Amendment**

The 1957 amendment substituted the

### **CHAPTER 7—STATE HOSPITAL FOR INEBRIATES**

**Section 38-707. Charges for maintenance and treatment of patient.**

**38-708. Financial condition of patient—liability of relatives.**

**38-707. (1451) Charges for maintenance and treatment of patient.** The cost for care and maintenance of all persons committed to the Montana state hospital for inebriates shall not exceed the following amounts: Three dollars (\$3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter not to exceed the sum of two dollars (\$2.00) per day. Should the person admitted, or the persons legally liable for his support, be found to be financially unable to pay for the cost of care and maintenance the same shall be a proper charge against the county from which the patient is admitted.

**History:** En. Sec. 8, Ch. 139, L. 1911; re-en. Sec. 1451, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1955.

#### **Amendment**

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

**38-708. (1452) Financial condition of patient—liability of relatives.** (1) Whenever an examination or hearing for committal to the state hospital for inebriates is had and the person is adjudged and ordered to be confined in the state hospital for inebriates, it shall be the duty of the judge, the clerk of the district court and the county board of public welfare to determine the financial condition of the person admitted and the persons legally liable for his support, and to make an order relative to the payment of the charges for the cost of care and maintenance in accordance with the provisions of section 38-214.

**History:** En. Sec. 9, Ch. 139, L. 1911; re-en. Sec. 1452, R. C. M. 1921; amd. Sec. 2, Ch. 130, L. 1955.

**Repealing Clause**

Section 3 of Ch. 130, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1955 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL**

Section 38-801. Montana state training school and hospital established.

38-809. Duty of board as to approved applications—board required to determine amount paid by person admitted or parents.

38-809.1. Investigation of financial conditions of persons liable for support and maintenance of person presently in school—change in order for payment.

38-812. Citation to persons liable to testify as to financial condition—order for support.

**38-801. Montana state training school and hospital established.** That the institution heretofore established at Boulder, in Jefferson county, state of Montana, as a training school and hospital for the education, training and detention of subnormal minors and adults and epileptics, shall be known and designated as the "Montana state training school and hospital," and shall be under the general direction, supervision and control of the state board of education, with a local executive board appointed in the manner, and having the powers and duties granted to and imposed upon such local executive board by the provisions of sections 75-302 to 75-309.

**History:** En. Sec. 1, Ch. 183, L. 1943; amd. Sec. 1, Ch. 37, L. 1959.

ing school" wherever they appear in this section.

**Amendment**

The 1959 amendment added the words "and hospital" following the words "train-

**Repealing Clause**

Section 2 of Ch. 37, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**38-809. Duty of board as to approved applications—board required to determine amount paid by person admitted or parents.** (1) When an application has been filed with a county board of public welfare, and the reports of the member of the staff investigating such application, and the report of the county physician of his examination of the person named therein, have been filed with such board, if such board finds and determines that he is a proper person to be placed in such training school and hospital, such board shall ascertain from the superintendent thereof if there is room for his accommodation in such school, and if there is, the board may then make an order approving such application, and authoriz-



ing the transportation to and the placing of such person in such school, and if it appears to such board that the person named in said application has means, money or property out of which the cost of his transportation, care, maintenance, clothing and other necessary personal expenses in such school, or some part thereof could be paid, or that he has parents, or other relatives legally liable for his support and maintenance who are financially able to pay for such transportation, care, maintenance, clothing and other necessary personal expenses while in such school, or a part thereof, the board shall make an order requiring the person or persons having possession of any of said moneys, means or property, or such parents or other relatives, to appear before such board, at a time and place fixed in said order, to testify before such board regarding any such money, means or property of such person or the financial ability of such parents or other relatives to pay for such transportation, care, maintenance, clothing and other necessary expenses.

(2) After nearing such evidence and examining the report of the investigator filed with such board, the board shall fix and determine the amount, if any, to be paid for such transportation, maintenance, care, clothing and other necessary expenses while in such school out of any money, means or property of such person, or by his parents or other relatives who are legally liable for his support and maintenance; provided, however, that the amount payable per day, under such order, shall not exceed the average per capita operating cost per day for such school as certified by the superintendent; provided further that the amount so certified by the superintendent shall be the amount fixed by such order, unless the board shall affirmatively determine after investigation that a lesser amount should be payable.

(3) The board shall have the power at any time, at the request of any person concerned or of its own motion, to review and change any order for support so made, and may, if necessary, require a further hearing and investigation as provided for in subparagraph (1) of this section.

(4) If any person liable to make any payments provided for by this section shall fail or refuse to make such payments, the said payments shall be collectible by a civil suit brought in the name of the state of Montana. The county attorney of the county in which the order was made, or in which such person resides, is hereby authorized and required to demand payment of such person and institute a suit, if necessary, to recover such payments.

**History:** En. Sec. 9, Ch. 183, L. 1943; amd. Sec. 1, Ch. 186, L. 1953; amd. Sec. 1, Ch. 73, L. 1959.

#### **Amendment**

The 1959 amendment in subd. (1) inserted the words "and hospital" after the words "in such training school"; substituted the proviso in subd. (2) for one

which placed a maximum of \$2.00 a day contribution and deleted a provision in that subdivision which required the county clerk to make certified copies of the application and order and give it to the officer transporting the person to the school, and added subdivisions (3) and (4).

**38-809.1. Investigation of financial conditions of persons liable for support and maintenance of person presently in school—change in order for payment.** As soon as possible after the effective date of this act the



superintendent of the Montana state training school and hospital shall certify to the boards of county commissioners of the various counties of the state of Montana the names of all persons who have been committed from their respective counties, and of all persons residing within such counties who are responsible for payments for care and maintenance of any person committed to the school. It shall be the duty of each such board of county commissioners to require a new investigation of the financial condition and resources of each such person liable for payments and, if such board shall determine that the payments made by such person should be charged in accordance with the standard provided in section 38-809, Revised Codes of Montana, 1947, as amended, a new order requiring such changed payments shall be entered by such board.

**History:** En. 38-809.1 by Sec. 2, Ch. 73,  
L. 1959.

**Compiler's Note**

The effective date of this act is March  
2, 1959.

**38-812. Citation to persons liable to testify as to financial condition—order for support.** If it appears to the court on such hearing that the person named in such application has money, means or property out of which the cost of transportation and care, maintenance, clothing and other necessary personal expenses of such person in such school, or some part thereof could be paid, or has parents or other relatives legally liable for his support and maintenance and financially able to pay the same, or a part thereof, a citation may be issued by the court to the person or persons having possession of such moneys, means or property, or any part thereof, and to said parents or other relatives, requiring them to appear and testify concerning such property, or their financial ability to pay for such transportation, care, maintenance, clothing and other expenses at such school, and on such hearing the court may make such order or orders as may be deemed proper for the payment thereof, or some part thereof, out of the moneys, means or property of such person or by such parents or other relatives, which order or orders shall be filed in the office of the clerk of the court, and such clerk shall make a certified copy thereof and deliver the same to the county board of public welfare; provided, however, that the amount payable per day under such order shall not exceed the average per capita operating cost per day for such school as certified by the superintendent; provided further that the amount so certified by the superintendent shall be the amount fixed by such order, unless the court shall affirmatively determine after investigation that a lesser amount should be payable.

**History:** En. Sec. 12, Ch. 183, L. 1943;  
amd. Sec. 2, Ch. 186, L. 1953; amd. Sec.  
3, Ch. 73, L. 1959.

**Repealing Clause**

Section 5 of Ch. 73, Laws 1959 repealed  
all acts and parts of acts in conflict there-  
with.

**Amendment**

The 1959 amendment substituted the  
present proviso in this section for one  
which placed a maximum of \$2.00 a day  
for the contribution.

**Effective Date**

Section 4 of Ch. 73, Laws 1959 pro-  
vided the act should be in effect from and  
after its passage and approval. Approved  
March 2, 1959.

## CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

Section 38-1106. Care and custody of patient—cost of maintenance.

38-1108. Transfer of patients from state hospital to home.

## 38-1102 to 38-1105. Repealed.

**Repeal**

These sections (Secs. 7 to 10, Ch. 206, L. 1949), relating to procedure for admission and commitment to the Montana

home for senile men and women, were repealed by Sec. 1, Ch. 230, Laws 1959, effective March 11, 1959.

**38-1106. Care and custody of patient—cost of maintenance.** Upon delivery of any person to the home, the patient shall be under the care, custody and control of the superintendent until discharged by the superintendent or by a court of competent jurisdiction.

The provision of the law applicable to the costs of the care and maintenance of persons otherwise committed and confined in the state hospital at Warm Springs shall be applicable likewise to the costs of the care and maintenance of senile persons.

**History:** En. Sec. 11, Ch. 206, L. 1949; amd. Sec. 2, Ch. 230, L. 1959.

**Amendment**

The 1959 amendment deleted the words "the superintendent thereof shall retain

the duplicate warrant and endorse his receipt upon the original which shall be filed in the court of commitment. Upon such" which appeared after the words "delivery of any person to the home."

## 38-1107. Repealed.

**Repeal**

This section (Sec. 12, Ch. 206, L. 1949), relating to the commitment to the state hospital of inmates of the home who be-

came violently insane, was repealed by Sec. 1, Ch. 230, Laws 1959, effective March 11, 1959.

**38-1108. Transfer of patients from state hospital to home.** The superintendent of the hospital at Warm Springs, Montana, is authorized to have examinations of the patients at that institution made by competent doctors for the purpose of ascertaining whether some patients there should be transferred to the home, and if as a result of such examinations any persons are found to be senile, the state board of examiners of the state of Montana is authorized to order their transfer from the state hospital at Warm Springs, Montana, to the home.

**History:** En. Sec. 13, Ch. 206, L. 1949; amd. Sec. 3, Ch. 230, L. 1959.

**Amendment**

The 1959 amendment deleted the words "now in confinement" which appeared after the words "whether some patients."

**Repealing Clause**

Section 4 of Ch. 230, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 5 of Ch. 230, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

Chapter 286, Laws 1959, enacted a new Montana Insurance Code, effective January 1, 1961. This Code is compiled as sections 40-2601 to 40-5359 in a separately bound booklet. Section 673 of Ch. 286, Laws 1959, repealed all of previous Title 40 except sections 40-1334 to 40-1336, 40-1703, 40-1723 to 40-1725, and 40-1727. However, the repeal does not become effective until January 1, 1961, so material pertaining to the repealed sections is contained herein.

For the statutory law on insurance **prior to January 1, 1961**, see parent volume and this pocket supplement.

For the statutory law on insurance **on and after January 1, 1961**, see the separately bound booklet entitled "Montana Insurance Code."

## TITLE 40—INSURANCE AND INSURANCE COMPANIES

Chapter 12. State insurance commission, 40-1204.

13. Insurance companies—license and general regulations, 40-1302, 40-1334 to 40-1336.

24. Insurance rate regulation—rating bureaus, 40-2413.

### CHAPTER 2—PARTIES—INSURABLE INTEREST

**40-214. (8078) Transfer after loss.**

#### **Fire Insurance**

When buyer obtains fire insurance for the benefit of the seller, seller's right to the proceeds passes to the assignee al-

though contract of sale is cancelled by the seller after fire. *American Equitable Assurance Co. v. Newman*, 132 M 63, 313 P 2d 1023, 1027.

### CHAPTER 10—LIFE, HEALTH AND ACCIDENT INSURANCE

**40-1002. (8159) Insurable interest.**

#### **References**

Cited or applied in *Feely v. Lacey*, 133 M 283, 322 P 2d 1104, 1107.

### CHAPTER 11—INSURANCE AND SURETY COMPANIES' REGULATION BY COMMISSIONER OF INSURANCE

**40-1109. (170) Abstracting life insurance policies—license and fee.**

#### **Application of Section**

This section was inapplicable to life insurance company seeking damages against defendant where plaintiff's injury resulted from the conduct of the defendant, and

not from its failure to have a license. *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 276, 291.

## CHAPTER 12—STATE INSURANCE COMMISSION

Section 40-1204. Agreement by insurer waiving right to raise defense of sovereign immunity.

**40-1201 to 40-1203. Repealed.****Repeal**

These sections (Secs. 1 to 3, Ch. 103, L. 1939, as amended by Sec. 1, Ch. 179, L. 1955), relating to a state insurance com-

mission whose duty related to insurance on state owned property, were repealed by Sec. 1, Ch. 163, Laws 1959, effective March 7, 1959.

**40-1204. Agreement by insurer waiving right to raise defense of sovereign immunity.** All contracts or policies of casualty insurance covering state-owned properties or state risks must contain therein as a part thereof, an agreement on the part of the insurer waiving all right to raise the defense of sovereign immunity and no money shall be paid out of the state treasury to any person, firm or corporation, as a consideration or premium on any policy or contract of casualty insurance unless said policy or contract of casualty insurance contains said agreement.

**History:** En. Sec. 1, Ch. 74, L. 1955.

all acts and parts of acts in conflict therewith.

**Title of Act**

An act providing that all contracts or policies of casualty insurance covering state-owned properties or state risks must contain therein an agreement on the part of the insurer waiving all right to raise the defense of sovereign immunity.

**Construction of Section**

This section is limited to state-owned property and provides for a specific policy provision waiving the right to raise the defense of sovereign immunity. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

**Repealing Clause**

Section 2 of Ch. 74, Laws 1955 repealed

## CHAPTER 13—INSURANCE COMPANIES—LICENSE AND GENERAL REGULATIONS

Section 40-1302. License fee.

40-1334. Retaliation against foreign insurers—taxes, fees, penalties and deposits.

40-1335. Taxes to which retaliation not applied—deductions for property tax.

40-1336. Domicile of alien insurer.

**40-1302. (6112) License fee.** All insurance corporations, associations, and societies including all authorized and formerly authorized insurance corporations, associations and societies, before commencing to do business in the state of Montana, shall be required to secure a license, authorizing them to transact business of insurance corporations, associations, or societies, and shall annually pay to the state auditor, for such license, the following fees:

For a license to collect in any one year premiums amounting to five thousand dollars or less, one hundred and twenty-five dollars.

For a license to collect in any one year premiums over the sum of five thousand dollars, the sum of twenty dollars for each and every one thousand dollars to be so collected; provided that for each of the calendar years of 1957, 1958, 1959 and 1960 the license fee shall be the sum of twenty-two dollars and fifty cents for each and every one thousand dollars to be collected; provided, further that, where any insurance corporation, association, or society has fifty per cent of its capital stock



invested in Montana securities, such insurance corporation, association, or society shall be allowed to deduct whatever tax it may have already paid from the amount due for such license fee or tax, as herein provided.

With respect to authorized insurers, the annual premium tax provided by this section shall when paid be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees and excises of whatever kind or character, excepting only the fees prescribed by this title, taxes on real and tangible personal property located in this state and taxes payable under section 82-1231, Revised Codes of Montana, 1947, and demands for state, county, city, district, municipal, and school taxes, licenses, fees and excises made because of operations prior to January 1, 1957.

**History:** En. Sec. 2, p. 77, L. 1897; re-en. Sec. 4017, Rev. C. 1907; amd. Sec. 1, Ch. 63, L. 1915; re-en. Sec. 6112, R. C. M. 1921; amd. Sec. 1, Ch. 224, L. 1957; amd. Sec. 1, Ch. 42, L. 1959.

#### Amendments

The 1957 amendment inserted the word "annually" near the end of the first paragraph; in the third paragraph added the first proviso clause, inserted the word "further" to the second proviso clause and added all of the last paragraph.

The 1959 amendment added the phrase "including all authorized and formerly authorized insurance corporations, associations and societies," following the word "societies" near the beginning of the first paragraph and added the phrase "1959 and 1960" to the first proviso in the third paragraph.

#### Repealing Clauses

Section 2 of Ch. 224, Laws 1957 read "That all acts or parts of acts in conflict herewith except other sections of Title 40, Revised Codes of Montana, 1947, be, and the same hereby are, repealed."

Section 2 of Ch. 42, Laws 1959 read "That all acts or parts of acts in conflict herewith except other sections of Title 40, Revised Codes of Montana, 1947, be, and the same hereby are repealed."

#### Effective Dates

Section 3 of Ch. 224, Laws 1957 read "The provisions of this act shall apply to taxable years beginning after December 31, 1956."

Section 3 of Ch. 42, Laws 1959 read "The provisions of this act shall apply to taxable years beginning after December 31, 1956."

### 40-1308. (6118) Obtaining of licenses to transact insurance business, etc.

#### Unauthorized Competition

Life insurance agent was not the proper party to bring action against state auditor to have license granted by him to a foreign corporation declared void. *Waite v.*

*Holmes*, 133 M 512, 327 P 2d 399, 407.

This section does not protect insurance agents from unauthorized competition. *Waite v. Holmes*, 133 M 512, 327 P 2d 399, 406.

**40-1334. Retaliation against foreign insurers—taxes, fees, penalties and deposits.** When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Montana insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers, or upon the

agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Montana. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Montana insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

**History:** En. Sec. 1, Ch. 43, L. 1959.

#### **Title of Act**

An act to provide for retaliation against the insurers of any other state or foreign country on account of taxes, licenses and other fees, fines, penalties, deposit requirements or other material obligations which are or would be imposed upon Montana insurers, their agents or representatives, which are in excess of such taxes, licenses and other fees, fines, penalties, deposit requirements or other obligations imposed upon similar insurers or agents or representatives of such insurers of such other state or country under the statutes of this state; providing for the inclusion of

taxes, licenses or other fees imposed by any city, county or other political subdivision or agency of such other state or country to be within the purview of this act; providing for the exclusion from the operation of this act personal income taxes, ad valorem taxes on real or personal property, special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; defining domicile of an alien insurer for the purpose of this act, other than insurers formed under the laws of Canada; providing for an effective date for this act; and specifically repealing section 40-1428, Revised Codes of Montana, 1947.

**40-1335. Taxes to which retaliation not applied—deductions for property tax.** This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

**History:** En. Sec. 2, Ch. 43, L. 1959.

#### **Compiler's Note**

The phrase "this section" as used at

the beginning and end of the above section apparently was intended to mean "this act" (40-1334 to 40-1336).

**40-1336. Domicile of alien insurer.** For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within six (6) months after the effective date of this act, whichever date is the later, and may be any one of the following states:

- (1) That in which the insurer was first authorized to transact insurance;
- (2) That in which is located the insurer's principal place of business in the United States;
- (3) That in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

**History:** En. Sec. 3, Ch. 43, L. 1959.

**Compiler's Note**

The phrase "this section" near the beginning of the above section was apparently intended to mean "this act" (40-1334 to 40-1336).

**Repealing Clause**

Section 4 of Ch. 43, Laws 1959 read "Section 40-1428, Revised Codes of Mon-

tana, 1947, is hereby specifically repealed, together with all other acts and parts of acts in conflict herewith."

**Effective Date**

Section 5 of Ch. 43, Laws 1959 read "This act shall be in full force and effect as to all taxable years commencing after December 31, 1958."

CHAPTER 14—INSURANCE COMPANIES OTHER THAN LIFE

**40-1428. (6155) Repealed.**

**Repeal**

This section (Sec. 677, Civ. C. 1895), relating to reciprocity deposits of securi-

ties for foreign companies, was repealed by Sec. 4, Ch. 43, Laws 1959.

CHAPTER 19—LIFE INSURANCE COMPANIES

**40-1939. (6290.1) Misrepresentations concerning insurance prohibited.**

**Business Advertising**

Newspaper ad to buyers of life insurance warning them about representations by certain agents and requesting that they report proposals to insurance commis-

sioner for his opinion was libelous per se. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 289.

**40-1940. (6290.2) Inducing owner to forfeit, surrender policy, etc.**

**Business Advertising**

Newspaper ad to buyers of life insurance warning them about representations by certain agents and requesting that they report proposals offered to insurance commissioner for his opinion was libelous per se. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 276, 289.

new policy for the one interfered with. Both parties to the contract are protected by the statute. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 276, 290, 291.

**Publication of Libel**

Where complaint of private corporation, doing a life insurance business, alleged that ad in newspaper was published concerning it and its policy and that the representations were misrepresentations, it was entitled to an opportunity to prove its charges. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 276, 290, 291.

**Construction of Statute**

This statute (40-1940, 40-1941) was designed for the protection of insurance companies as well as for the protection of the public. It prohibits interference with contracts of insurance which interference has for its purpose the substitution of a

**40-1941. (6290.3) Penalty for violations.**

**References**

Cited in Professional & Business Men's

Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 276, 291.

CHAPTER 24—INSURANCE RATE REGULATION—RATING BUREAUS

Section 40-2413. Prohibiting regulation of dividends—regulating deviations.

**40-2413. Prohibiting regulation of dividends—regulating deviations.** Nothing in this act shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.



(a) In connection with regulating deviations, every member of or subscriber to a rating organization shall adhere to the filings made on its behalf of such organization except that:

1. In the case of casualty insurance to which this act applies any such insurer may make written application to the commissioner for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance (1) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or (2) or for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the date upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization; and

2. In the case of fire, marine, and inland marine insurance to which this act applies any insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance or combination thereof. Such application shall specify the basis for the deviation and a copy thereof shall be sent simultaneously to such rating organization.

(b) The commissioner shall set a time and place for a hearing on such application at which the insurer and such rating organization may be heard and shall give them not less than ten (10) days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In considering the application for permission to file such deviation in the case of fire, marine and inland marine insurance, the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 40-2406 of this chapter. The commissioner shall issue an order permitting the modification for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of such permission unless terminated sooner with the approval of the commissioner.

**History:** En. Sec. 13, Ch. 255, L. 1947; amd. Sec. 1, Ch. 108, L. 1955.

#### **Amendment**

The 1955 amendment substituted the present subd. (a) (2) for one which read: "2. In the case of fire, marine, and inland marine insurance to which this act applies any insurer may deviate from the bureau rate by notifying the commissioner in writing ten (10) days before the deviation is to become effective. Should the com-

missioner find such rate unfair, discriminatory, or of such a nature as to affect the solvency of the insurer, he shall order a hearing. The commissioner shall set a time and place for a hearing at which all interested parties may be heard and shall give the insurer not less than ten (10) days' written notice thereof. The commissioner after the hearing shall make an order either approving or disapproving the rate and any interested party may appeal from the ruling of the commis-



sioner to the court as in this act provided and during the pendency of the appeal the commissioner's order shall be held in abeyance. If any insurer grants a lower rate on any class of property than that fixed by the bureau of which it is a member or subscriber, this rate shall not be increased by the insurer until one (1) year has elapsed without first securing the approval of the commissioner. A declaration filed with the commissioner of insurance by any insurer of its intention to write insurance at a uniform variation of a certain per cent from the bureau rate shall be sufficient compliance with this

act" and in subd. (b) inserted the words "on such application" between the words "hearing" and "at" and added the third and last sentences.

**Repealing Clause**

Section 2 of Ch. 108, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 108, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

CHAPTERS 26 TO 53—MONTANA INSURANCE CODE

COMPILER'S NOTE.—This Code, enacted by Chapter 286, Laws 1959, effective January 1, 1961, is compiled in the separately bound booklet entitled "Montana Insurance Code." See note at top of p. 145 herein.

## TITLE 41—LABOR

- Chapter 1. Obligations of employers, 41-117.
7. Preference of Montana labor in public works contracts, 41-701.
  8. Vocational rehabilitation and education, 41-801, 41-805, 41-806.
  10. Protection of street car employees, Repealed—Section 1, Chapter 12, Laws of 1957.
  11. Hours of labor in various employments, 41-1121.
  12. Apprenticeship council and contracts, 41-1201, 41-1202.
  16. Department of labor and industry, 41-1603.
  18. Labor union regulation, 41-1801 to 41-1805.

### CHAPTER 1—OBLIGATIONS OF EMPLOYERS

Section 41-117. Itemized statement of deductions from salary or wage—employer to furnish.

**41-117. Itemized statement of deductions from salary or wage—employer to furnish.** All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security or any other deductions together with the amount of each deduction.

Where no deduction is made in such payment of wages or salaries the employer shall give to the employee a statement that the payment does not include any such deductions.

**History:** En. Sec. 1, Ch. 159, L. 1957.

#### Title of Act

An act to provide for the employer to give to the employee an itemized statement including the amounts of any deductions made by the employer for state and federal income taxes, social security or any other deductions; providing further that if no deductions are withheld by the employ-

er that the employer give to the employee at the time he makes payment for salaries or wages a statement stating that no deductions have been made; and containing a repealing clause.

#### Repealing Clause

Section 2 of Ch. 159, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 7—PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS CONTRACTS

Section 41-701. Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.

**41-701. (3043.1) Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.** In all contracts hereafter let for state, county, municipal and school construction, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages in effect as paid in the county in which the work is being performed. "Standard prevailing rate of wages," as set forth herein, means those wages which are paid in the county by other contractors for the same type of work performed in such county under this act. No contract shall be let to any person, firm, association or cor-

poration refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

**History:** En. Sec. 1, Ch. 102, L. 1931;  
amd. Sec. 1, Ch. 32, L. 1955.

#### Amendment

The 1955 amendment in the first sentence deleted the words "seat of the county" which appeared after the words "paid in the county"; substituted a period for the word "and" which appeared after the word "performed" and added a new sentence beginning with the words "Standard prevailing rate of wages," \* \* \*.

#### Repealing Clause

Section 2 of Ch. 32, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 32, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

## CHAPTER 8—VOCATIONAL REHABILITATION AND EDUCATION

Section 41-801. Definitions.

41-805. Cooperation with federal government.

41-806. Receipt and disbursement of rehabilitation funds.

**41-801. Definitions.** As used in this act:

(a) to (e). \* \* \* [Subdivisions (a) to (e), same as parent volume.]

(f) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap, and to enable him in so far as possible to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials;

(g) to (l). \* \* \* [Subdivisions (g) to (l), same as parent volume.]

**History:** En. Sec. 1, Ch. 74, L. 1947;  
amd. Sec. 1, Ch. 218, L. 1959.

#### Amendment

The 1959 amendment inserted the words "in so far as possible" in subd. (f).

**41-805. Cooperation with federal government.** The state board, through the bureau, shall cooperate, pursuant to agreements, with the federal government in carrying out the purposes of any federal statutes pertaining to rehabilitation and is authorized to adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

**History:** En. Sec. 5, Ch. 74, L. 1947;  
amd. Sec. 2, Ch. 218, L. 1959.

#### Amendment

The 1959 amendment deleted the word "vocational" in two places where it preceded "rehabilitation."

**41-806. Receipt and disbursement of rehabilitation funds.** The state treasurer is hereby designated as the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to rehabilitation. The state treasurer shall make disbursements from such funds and from all state funds available for rehabilitation purposes upon certification in the manner provided in section 41-803 (e).

**History:** En. Sec. 6, Ch. 74, L. 1947; amd. Sec. 3, Ch. 218, L. 1959.      repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment deleted the word "vocational" in two places where it preceded the word "rehabilitation."

**Effective Date**

Section 5 of Ch. 218, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

**Repealing Clause**

Section 4 of Ch. 218, Laws 1959 re-

## CHAPTER 10—PROTECTION OF STREET CAR EMPLOYEES

(Repealed—Section 1, Chapter 12, Laws of 1957)

**41-1001 to 41-1007. (3061 to 3067) Repealed.**

**Repeal**

These sections (Secs. 1, 3, 4, Ch. 78, L. 1907; amd. Secs. 1, 2, Ch. 44, L. 1913; amd. Secs. 1, 2, Ch. 80, L. 1913; amd. Sec. 1,

Ch. 51, L. 1921), relating to protection of street car employees, were repealed by Sec. 1, Ch. 12, Laws 1957.

## CHAPTER 11—HOURS OF LABOR IN VARIOUS EMPLOYMENTS

Section 41-1121. Hours of labor for state and municipal governments, mines, mills, smelters.

**41-1121. (3079) Hours of labor for state and municipal governments, mines, mills, smelters.** A period of eight hours shall constitute a day's work in all works and undertakings carried on or aided by any municipal, county, or state government, first class school districts, and on all contracts let by them, and for all janitors, except in court houses of sixth and seventh class counties, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any municipal, county, or state governments, school districts of first class, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing and treatment of coal; except in cases of emergency when life or property are in imminent danger. Provided, that for fire-fighters in cities of the first and second class, a work week shall be a period of a maximum of forty hours during a five day week.

**History:** En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R. C. M. 1921; amd. Sec. 2, Ch. 116, L. 1929; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957. Cal. Pol. C. Secs. 3244, 3245.

**Amendment**

The 1957 amendment added the proviso clause.

**Repealing Clause**

Section 2 of Ch. 244, Laws 1957 repealed all acts and parts of acts in conflict therewith.



CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

Section 41-1201. Apprenticeship council.

41-1202. Duties of state apprenticeship council.

**41-1201. Apprenticeship council.** (a) The commissioner of labor and industry shall appoint an apprenticeship council, composed of three (3) representatives each from employer and employee organizations respectively. The terms of office of the members of the apprenticeship council first appointed by the commissioner of labor and industry shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years, and three (3) years respectively. On and after July 1, 1957, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex-officio members of said council without vote.

(b) Subject to the approval of the federal committee on apprenticeship, the apprenticeship council shall: (1) establish standards for apprenticeship agreements in conformity with the provisions of this act; (2) issue such rules and regulations as may be necessary to carry out the intent and purposes of this act; and (3) perform such other duties as are hereinafter imposed. Not less than once every two years the apprenticeship council shall make a report through the governor of the state of Montana of its activities and findings to the legislature which shall be made available to the public.

(c) The council may accept from the federal government or any agency thereof or from any state agency, any funds made available to carry out purposes within the scope of the activities and purposes of the apprenticeship council and to use such funds as said council may direct, for the purposes for which said funds are made available.

(d) A per diem of fifteen dollars (\$15.00) plus actual and necessary expenses for meals and lodging, such expenses not to exceed that paid other state officials or employees, shall be paid each voting member of the state apprenticeship council, or their authorized representatives, while in official travel status and while attending official meetings for each whole or part of any calendar day. Such voting members, or their representatives, shall be reimbursed a mileage rate and the same is paid other state officials or state employees, for use of personally-owned vehicles to attend official meetings from any point in the state of Montana to the place of meeting in Montana and return. A maximum of three hundred dollars (\$300.00) shall be the limitation for the combined per diem, expenses and mileage payments as provided for herein, for each voting member of said council, or their representatives, during the twelve (12) consecutive month period of any fiscal year from July first of one year to June thirtieth of the next following year.

**History:** En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957.

**Amendment**

The 1957 amendment in subd. (a) substituted the words "On and after July 1, 1957" for the word "Thereafter" which

appear at the beginning of the third sentence; inserted the words "by the governor of the state of Montana" in the third and fourth sentences; in subd. (b) in the last sentence substituted "every two years" for "a year" and "governor of the state of Montana" for "commissioner of labor and industry" and added subd. (d).

**41-1202. Duties of state apprenticeship council.** The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education. The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act.

**History:** En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957.

**Amendment**

The 1957 amendment substituted the words "voting members of the apprenticeship council are" for the words "commissioner of labor and industry is" in the last sentence of this section.

**Repealing Clause**

Section 4 of Ch. 183, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 183, Laws 1957 provided the act should be in full force and effect on July 1, 1957.

**CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY**

**Section 41-1603. Commissioner of labor and industry—term—salary—oath—bond.**

**41-1603. Commissioner of labor and industry—term—salary—oath—bond.** The term of office of the commissioner of labor and industry appointed at this time shall terminate on March 4, 1953; and, the term of office of the commissioner of labor and industry appointed thereafter shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary of six thousand dollars (\$6,000.00) payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by section 1, Article XIX of the Montana Constitution and execute an official bond in the amount of one thousand dollars (\$1,000.00).

**History:** En. Sec. 3, Ch. 177, L. 1951;  
amd. Sec. 1, Ch. 27, L. 1957.

**Amendment**

The 1957 amendment raised the salary of the commissioner of labor and industry from \$5,000 to \$6,000.

**Effective Date**

Section 2 of Ch. 27, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 21, 1957.

CHAPTER 18—LABOR UNION REGULATION

Section 41-1801. Intent of act.

41-1802. Unfair labor practice.

41-1803. "Immediate family" defined.

41-1804. Beer and liquor establishment excepted from act.

41-1805. Violation of act—penalty.

**41-1801. Intent of act.** It is the intent of this act that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of his immediate family shall have the right to do any work in his place of business without interference by any union or any member thereof.

**History:** En. Sec. 1, Ch. 160, L. 1959.

**Title of Act**

An act providing that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of his immediate family may do any work in his place of business; pro-

viding that any union or member thereof who interferes with or infringes on this right shall be guilty of an unfair labor practice; providing nothing in this act shall apply to an establishment that sells liquor or beer; providing for penalties; providing for a repealing clause.

**41-1802. Unfair labor practice.** Any union or member thereof who shall infringe or interfere with the right of an owner and the members of his immediate family to do any work in his place of business shall be guilty of an unfair labor practice.

**History:** En. Sec. 2, Ch. 160, L. 1959.

**41-1803. "Immediate family" defined.** "Immediate family" shall include the owner, his spouse, and any children under the age of eighteen (18) years.

**History:** En. Sec. 3, Ch. 160, L. 1959.

**41-1804. Beer and liquor establishment excepted from act.** Nothing in this act shall apply to an establishment that sells liquor or beer.

**History:** En. Sec. 4, Ch. 160, L. 1959.

**41-1805. Violation of act—penalty.** Violation of any of the provisions of this act shall be punishable by a fine of fifty dollars (\$50.00).

**History:** En. Sec. 5, Ch. 160, L. 1959.

**Repealing Clause**

Section 6 of Ch. 160, Laws 1959 read "Any act in conflict herewith is hereby repealed."



## TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

Chapter 3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310, 43-311.

7. Legislative council, 43-709 to 43-715.

8. Lobbying, 43-801 to 43-808.

9. Legislative proceedings—dissemination, 43-901 to 43-904.

### CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem and mileage of members.

43-311. Per diem and mileage of president of senate and speaker of house.

**43-310. (74) Per diem and mileage of members.** Members of the legislative assembly hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and seven cents (7c) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

**History:** En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955. Cal. Pol. C. Sec. 266.

#### Amendment

The 1955 amendment raised the per diem from \$10 to \$20 per day and the mileage from 6¢ to 7¢ per mile.

**43-311. (75) Per diem and mileage of president of senate and speaker of house.** The president of the senate, and the speaker of the house, shall receive the sum of twenty-five dollars (\$25.00) per day during the session of the legislative assembly, and the same mileage as members.

**History:** En. Sec. 221, Pol. C. 1895; re-en. Sec. 78, Rev. C. 1907; amd. Sec. 2, Ch. 45, L. 1909; re-en. Sec. 75, R. C. M. 1921; amd. Sec. 2, Ch. 23, L. 1955. Cal. Pol. C. Sec. 267.

which appeared after the words "The president of the senate," and raised the per diem from \$12 to \$25 per day.

#### Repealing Clause

Section 3 of Ch. 23, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1955 amendment deleted the words "after the first Monday in January, 1913,"

### CHAPTER 5—STATUTES—THEIR ENACTMENT AND OPERATION—GOVERNOR'S APPROVAL OR VETO

**43-507. (90) Statutes, when effective.**

#### References

Cited or applied in State v. Winter, 129 M 207, 285 P 2d 149, 155; Yurkovich v.

Industrial Accident Board, 132 M 77, 314 P 2d 866, 872.

**43-510. (93) Effect of amendment.**

#### Operation and Effect

Section 94-35-106.1 was not repealed by implication by the subsequent amendment of section 4-413 by Ch. 71, Laws 1953, since under this provision, the amendment

of 4-413 did not have the effect of re-enacting those provisions which were not altered. State v. Wild, 130 M 476, 305 P 2d 325, 328.



**43-514. (97) Repeal of laws creating criminal offenses, when bar, etc.****References**

Cited or applied in *State v. Winter*, 129 M 207, 285 P 2d 149, 156.

**CHAPTER 7—LEGISLATIVE COUNCIL**

- Section 43-709. Legislative council—members—term—vacancies.  
 43-710. Powers and duties.  
 43-711. Executive director—personnel—special committees.  
 43-712. Power to investigate and examine.  
 43-713. Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings.  
 43-714. Expenses.  
 43-715. Organization—officers—rules of procedure and records.

**43-709. Legislative council — members — term — vacancies.** There is hereby created a legislative council which shall consist of six (6) members of the house of representatives who shall be appointed by the speaker of the house of representatives, no more than three (3) of whom shall be of the same political party, and six (6) members of the state senate who shall be appointed by the committee on committees of the state senate, no more than three (3) of whom shall be of the same political party. The first members of the legislative council shall be appointed not later than the sixtieth legislative day of this session. New members of the council shall be appointed not later than the sixtieth legislative day of each succeeding session. Membership on said council shall terminate with the termination of each member's term of office, or on December 31 of the year following the year in which the appointment was made, whichever event first occurs. Any vacancy on said legislative council occurring when the legislature is not in session may be filled by the selection of another member of the legislature, by the remaining members of the council.

**History:** En. Sec. 1, Ch. 34, L. 1957.

**Title of Act**

An act relating to the creation of a legislative council consisting of six members of the house of representatives appointed by the speaker of the house of representatives and six members of the senate appointed by the committee on committees of the state senate; providing that no more than three members appointed from each house shall be of the same political party; providing when the first members of said council shall be appointed; providing for terms of office and filling vacancies on said council; prescribing the powers and duties of said council; providing for the employment of an executive director and necessary personnel including the services of research agencies; providing for appointment of special committees and prescribing their composition and functions; providing that the members of said council and committees shall serve without compensation except for actual travel and other incidental expenses incurred in the discharge of their duties; providing for the

election of a chairman of the council and its organization by the members thereof; providing for appropriation of funds for the purpose of carrying out the provisions of this act; containing a constitutional and validity clause and containing an effective date.

**Constitutionality**

The appointment of legislators to the council does not constitute an appointment to another civil office in violation of section 7, article V of the Montana Constitution. *State ex rel. James v. Aronson*, 132 M 120, 314 P 2d 849, overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

This chapter does not violate the limit on the length of a legislative session prescribed by section 5, article V of the Montana Constitution. *State ex rel. James v. Aronson*, 132 M 120, 314 P 2d 849, overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

**Senate Appointments**

An appointment under this section by

the senate committee on committees was effective even though phrased in terms of recommending the appointment to the full senate. State ex rel. James v. Aronson, 132 M 120, 314 P 2d 849.

Appointments under this section made

by the senate committee on committees need not be approved by the senate even though a senate rule provides that committee appointments are subject to ratification by the senate. State ex rel. James v. Aronson, 132 M 120, 314 P 2d 849.

**43-710. Powers and duties.** The legislative council shall accumulate, compile, analyze and furnish such information bearing upon any matters relating to existing or prospective legislation as may be determined by it upon its own initiative pertaining to important issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of consolidations of departments, commissions, boards and institutions in state government for the elimination of unnecessary activities and duplications in office personnel and equipment, for the coordination of activities, for the purpose of increasing efficiency of service or effecting economies, and for the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes, and all other matters pertaining to the function of all departments and branches of state government.

The legislative council shall prepare such bills and resolutions as in its opinion the welfare of the state may require for presentation to the next regular session of the legislative assembly.

**History:** En. Sec. 2, Ch. 34, L. 1957.

**Constitutionality**

This chapter does not violate section 1, article IV of the Montana Constitution,

providing for separation of powers. State ex rel. James v. Aronson, 132 M 120, 314 P 2d 849, overruling State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611.

**43-711. Executive director—personnel—special committees.** The legislative council may employ an executive director and such other personnel, not members of the council, as it deems necessary to assist in the preparation of its recommendations, proposed legislative acts and any other activities and shall fix the compensation of such employees. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

The legislative council may appoint special committees composed of either other members of the legislature or private citizens or both, to study and inquire into any specific governmental problem and to make recommendations for the solution of the same. The work of such special committee shall be performed under the general supervision of the legislative council and the personnel, data and facilities of said council shall be made available to such special committees.

**History:** En. Sec. 3, Ch. 34, L. 1957.

**43-712. Power to investigate and examine.** The legislative council shall have authority to investigate and examine into the costs of state governmental activities and may examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

**History:** En. Sec. 4, Ch. 34, L. 1957.

**Constitutionality**

This chapter does not violate section 1, article IV of the Montana Constitution, providing for separation of powers. State

ex rel. James v. Aronson, 132 M 120, 314 P 2d 849, overruling State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611.

**43-713. Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings.** In the discharge of its duties the legislative council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or any committee thereof, or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the legislative council to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

**History:** En. Sec. 5, Ch. 34, L. 1957.

**43-714. Expenses.** Members of the legislative council and its committees shall serve without compensation but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

**History:** En. Sec. 6, Ch. 34, L. 1957.

**Constitutionality**

This section, in providing for reimbursement of actual expense, does not

violate sections 5, 8 or 26, article V of the Montana Constitution. State ex rel. James v. Aronson, 132 M 120, 314 P 2d 849, overruling State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611.

**43-715. Organization—officers—rules of procedure and records.** The legislative council shall organize within thirty (30) days after the passage and approval of this act by electing one (1) of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council and its committees are directed to keep accurate records of their activities and proceedings.

**History:** En. Sec. 7, Ch. 34, L. 1957.

**Appropriation**

Section 8 of Ch. 34, Laws 1957 read "There is hereby appropriated the sum of one hundred thousand dollars (\$100,000.00) for the purpose of carrying out the provisions of this act."

not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

**Separability Clause**

Section 9 of Ch. 34, read "If any sentence, section, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall

**Effective Date**

Section 10 of Ch. 34, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 21, 1957.



## CHAPTER 8—LOBBYING

- Section 43-801. Purpose of act.  
 43-802. Definitions.  
 43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.  
 43-804. Principal of lobbyists—entering name of lobbyists on docket.  
 43-805. Docket—contents—report to legislature—subjects of legislation—written authorization.  
 43-806. Practice without license and registration prohibited—copies of statements, briefs, etc.—restrictions applicable when.  
 43-807. Persons not required to be licensed or registered.  
 43-808. Penalty for violations.

**43-801. Purpose of act.** The purpose of this act is to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices and to provide for the licensing of lobbyists and the suspension of [or] revocation of such licenses.

**History:** En. Sec. 1, Ch. 157, L. 1959. before the state legislature and during sessions thereof; providing for licensing and registration of lobbyists; providing penalties and enforcement.

**Title of Act**

An act to regulate and control lobbying

**43-802. Definitions.** The following words and phrases shall have the meaning respectively ascribed to them:

(1) **Lobbying.** The practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity.

(2) **Lobbyist.** Any person who engages in the practice of lobbying for hire except in the manner authorized by section 7 [43-807]. Lobbying for hire shall include activities of any officers, agents, attorneys or employees of any principal who are paid a regular salary or retained by such principal and whose duties include lobbying. When a person is only reimbursed for his personal living and travel expenses, he shall not be considered to be lobbying for hire. Nothing in this section shall be construed to deprive any citizen not lobbying for hire of his constitutional right to communicate with members of the legislature.

(3) **Unprofessional conduct.** A violation of any of the provisions of this act, or soliciting employment from any principal, or instigating the introduction of legislation for the purpose of obtaining employment in opposition thereto, or attempting to influence the vote of legislators on any measure pending or to be proposed by the promise of support or opposition at any future election, or by any other means than argument on the merits thereof, or by making public any unsubstantiated charges of improper conduct on the part of any other lobbyist or of any legislator, or engaging in practices which reflect discredit on the practice of lobbying or the legislature.

(4) **Principal.** (a) Any person, corporation or association which engages a lobbyist or other person in connection with any legislation, pending before the legislature or to be proposed, affecting the pecuniary interest of such person, corporation or association.

(b) Any board, department, commission or other agency of the state, or any county or municipal corporation, which engages a lobbyist or other



person in connection with any legislation pending or to be proposed affecting the statutory powers, duties or appropriation of such agency, county or municipal corporation.

(5) Docket. The register of licensed lobbyists maintained by the secretary of state pursuant to section 5 [43-805].

(6) Pecuniary interest. This term includes without limitation any legislation which creates, alters or repeals any statutory charge by way of tax, license fee, registration fee or otherwise, or which creates, alters or repeals any statutory privilege, power, restriction or obligation of any principal, or which creates, alters or repeals the powers or duties of any court or governmental agency before which the principal does business.

**History:** En. Sec. 2, Ch. 157, L. 1959.

**43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.** (1) Licenses—fees—eligibility. Any person of adult age and good moral character who is a citizen of the United States and otherwise qualified under this act may be licensed as a lobbyist as herein provided. The secretary of state shall provide for the form of application for license. Such application may be obtained in the office of the secretary of state and filed therein. Upon approval of such application and payment of the license fee of ten dollars (\$10.00) to the secretary of state, a license shall be issued which shall entitle the licensee to practice lobbying on behalf of any one or more principals. Each license shall expire on December 31 of each odd numbered year. No application shall be disapproved without affording the applicant a hearing which shall be held and decision entered within ten (10) days, of the date of filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury in a special fund to be known as the "Lobby License Fund" which fund is to be expended in the manner hereinafter provided.

(2) Suspension or revocation of license. Upon verified complaint in writing to the attorney general of the state of Montana charging the holder of a license with having been guilty of unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general is hereby authorized to bring civil action in the district court for Lewis and Clark county, state of Montana, against the holder and in the name of the state as plaintiff to revoke the license. Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least twenty (20) days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff judgment shall be rendered revoking the license, and the clerk of the court shall file a certified copy of the judgment with the secretary of state. Costs shall be paid from the "Lobby License Fund." The licensing authority may commence any such action on his own motion.

(3) Suspension of lobbying privileges. No lobbyist whose license has been suspended or revoked and no person who has been convicted of a violation of any provision of this act shall engage in any lobbying until he has been reinstated to the practice of lobbying and duly licensed.

**History:** En. Sec. 3, Ch. 157, L. 1959.

**43-804. Principal of lobbyists—entering name of lobbyists on docket.** Except as provided in section 7 [43-807] every principal who employs any lobbyist shall within one (1) week after such employment cause the name of said lobbyist to be entered upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal.

**History:** En. Sec. 4, Ch. 157, L. 1959.

**43-805. Docket—contents—report to legislature—subjects of legislation—written authorization.** (1) The secretary of state shall prepare and keep a docket in which shall be entered the name and business address of each lobbyist and the name and business address of his principal, and the subject or subjects of legislation to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. Such docket shall be a public record and open to the inspection of any citizen upon demand at any time during the regular business hours of the office of the secretary of state. Beginning with the first week following the beginning of any regular or special session of the legislature and on every Tuesday thereafter for the duration of such session, the secretary of state shall from his records report to each house of the legislature the names of lobbyists registered under this act, not previously reported, the names of the persons whom they represent as such lobbyist, and subjects of legislation in which they are interested.

(2) Any principal employing any lobbyist shall when further subjects of legislation are introduced or arise which such lobbyist is to promote or oppose, make or cause to be made additional entries in the docket stating such employment so that the docket will show at all times all subjects of legislation in relation to which the lobbyist is employed or the general statement provided above.

(3) Within ten (10) days after his registration in the docket, a lobbyist shall file with the secretary of state a written authorization to act as such signed by his principal.

**History:** En. Sec. 5, Ch. 157, L. 1959.

**43-806. Practice without license and registration prohibited—copies of statements, briefs, etc.—restrictions applicable when.** (1) No person shall practice as a lobbyist unless he has been duly licensed under the provisions of section 3 [43-803] and unless his name appears upon the docket as employed in respect to such matters as he shall be promoting or opposing. No principal shall directly or indirectly authorize or permit any lobbyist employed by him to practice lobbying in respect to any legislation affecting the pecuniary interest of such principal until such lobbyist is duly licensed and the name of such lobbyist is duly entered on the docket. No person shall be employed as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending legislation or upon any other contingency connected with the action of the legislature or of either branch thereof or of any committee thereof.

(2) Before or within five (5) days after delivering any written or printed statement, argument or brief to the entire membership of either

or both houses of the legislature, three (3) copies shall be deposited with the secretary of state.

(3) The restrictions upon the practice of lobbying provided by this act shall be effective only during the regular and special sessions of the legislature.

**History:** En. Sec. 6, Ch. 157, L. 1959.

**43-807. Persons not required to be licensed or registered.** Any person who limits his lobbying solely to appearances before legislative committees of either house and registers his appearance on the records of such committee in writing, shall not be required to be licensed as a lobbyist, pay a license fee, or register with the secretary of state.

**History:** En. Sec. 7, Ch. 157, L. 1959.

**43-808. Penalty for violations.** Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail, not more than six (6) months, or by a fine not exceeding two hundred dollars (\$200.00), or both.

**History:** En. Sec. 8, Ch. 157, L. 1959.

#### **Separability Clause**

Section 9 of Ch. 157, Laws 1959 read  
“If any section, subsection, sentence,

clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portion of this act.”

### **CHAPTER 9—LEGISLATIVE PROCEEDINGS—DISSEMINATION**

- Section 43-901. Definitions.  
43-902. Schedule of fees.  
43-903. Exclusions.  
43-904. Exemptions—public officials.

**43-901. Definitions.** For the purposes of this act, the following definitions are adopted.

1. “Person” shall include any person, firm, corporation or association.
2. “Proceedings of the legislature” shall include status sheets, status of proceedings, mimeographed bills, mimeographed resolutions, mimeographed memorials, printed bills, printed resolutions and printed memorials and amendments thereto.
3. “One complete set” shall be one copy of each item of the proceedings of the legislature.

**History:** En. Sec. 1, Ch. 223, L. 1959.

#### **Title of Act**

An act to provide for a system of dissemination to the public of proceedings of the legislature, namely status sheets, status of proceedings, mimeographed bills, printed bills, and amendments to printed

bills; to provide for a schedule of fees to be paid by persons requesting and receiving such items; excluding representatives of the press, radio, and television, elected officials, state department heads and county clerks and recorders from the payment of fees, and repealing all acts and parts of acts in conflict herewith.

**43-902. Schedule of fees.** (a) Any person desiring to receive one complete set of the proceedings of the legislature shall pay to the secretary of state one hundred dollars (\$100.00). Upon receipt of such money the secretary of state shall transmit the name of said person to the clerk of the house of representatives and the secretary of the senate, who shall



supply such person with a complete set of the proceedings of the legislature. Any person desiring to receive more than one set of the proceedings of the legislature shall pay one hundred dollars (\$100.00) for each additional set.

(b) Any person desiring to receive single copies of mimeographed bills, mimeographed resolutions, mimeographed memorials, printed bills, printed resolutions, printed memorials or amendments thereto shall pay to the clerk of the house of representatives or the secretary of the senate twenty-five cents (25¢) per single copy.

(c) Any person desiring to receive single copies of status sheets or status of proceedings shall first pay to the clerk of the house of representatives or the secretary of the senate ten cents (10¢) per single copy.

(d) The chief clerk of the house of representatives and the secretary of the senate shall be responsible for accounting for all moneys received by them and shall transmit such funds received to the secretary of state before 5 o'clock P. M. each week day. Any moneys received by them during Saturday, Sunday or evening sessions of the legislative assembly shall be held by them in a safe place and transmitted to the secretary of state upon the next business day.

(e) The secretary of state shall account for all funds collected under this act and transmit such funds to the treasurer of the state of Montana, who shall credit them to the general fund.

**History:** En. Sec. 2, Ch. 223, L. 1959.

**43-903. Exclusions.** Representatives of the press, radio, and television who shall have first registered with the secretary of state shall be exempt from the provisions of section two [43-902] of this act and shall receive one complete set of the proceedings of the legislature without charge.

**History:** En. Sec. 3, Ch. 223, L. 1959.

**43-904. Exemptions—public officials.** All elected state officials, state department heads and county clerks and recorders shall be exempted from the provisions of section two [43-902] of this act.

**History:** En. Sec. 4, Ch. 223, L. 1959. repealed all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 5 of Ch. 223, Laws 1959 re-



## TITLE 44—LIBRARIES

Chapter 4. State law library, 44-409.

### CHAPTER 1—THE STATE LIBRARY OF MONTANA

#### 44-126. (1569) Repealed.

##### Repeal

This section (Sec. 2, Ch. 77, L. 1921; amd. Sec. 1, Ch. 50, L. 1929; amd. Sec. 5, Ch. 38, L. 1939; amd. Sec. 3, Ch. 128, L. 1949), relating to the employment and salary of an assistant law librarian, was repealed. The section was repealed in

1949 by Sec. 16, Ch. 134, Laws 1949, effective March 1, 1949, and by Sec. 13, Ch. 153, Laws 1949. The amendment of this section in 1949, Sec. 3 of Ch. 128, Laws 1949 was repealed by Sec. 4, Ch. 205, Laws 1955 effective March 5, 1955.

### CHAPTER 4—STATE LAW LIBRARY

Section 44-409. Salary of librarian and assistant librarian.

**44-409. Salary of librarian and assistant librarian.** The salary of the librarian of the state law library, and of the assistant librarian, shall be fixed in such amount as the board of trustees shall deem reasonable.

**History:** En. Sec. 9, Ch. 153, L. 1949; amd. Sec. 2, Ch. 205, L. 1955.

tion 2 of chapter 128 of the Laws of 1949, is herewith repealed."

##### Compiler's Note

Section 1 of Ch. 205, Laws 1955 amended section 82-1801.

Section 4 of Ch. 205, Laws 1955 read "That section 3 of chapter 128 of the Session Laws of 1949 is hereby repealed."

##### Amendment

The 1955 amendment deleted a proviso from this section which read "provided, however, that the salary of the librarian shall not exceed thirty-six hundred dollars (\$3,600.00) per annum, and the salary of the assistant librarian shall not exceed three thousand dollars (\$3,000.00)."

Section 5 of Ch. 205, Laws 1955 read "That section 4 of chapter 128 of the Session Laws of 1949 is hereby repealed."

Section 6 of Ch. 205, Laws 1955 repealed all acts and parts of acts in conflict therewith.

##### Effective Date

##### Repealing Clauses

Section 3 of Ch. 205, Laws 1955 read "That section 82-508, as amended by sec-

Section 7 of Ch. 205, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

## TITLE 45—LIENS

Chapter 10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1001 to 45-1012.

14. Crop or grain lien for dusting or spraying, 45-1402.

### CHAPTER 2—PRIORITY OF LIENS

#### 45-201. (8235) Priority of liens.

##### Operation and Effect

Where executors advanced money from their personal funds to the legatee of a cash bequest before distribution of the estate, their claim against the indebted-

ness of the estate was prior in time, and so superior, to the claim of a judgment debtor of the legatee. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1089.

### CHAPTER 5—MECHANICS' LIENS

#### 45-501. (8339) Who entitled to lien.

##### Construction Superintendent

Lien of general construction superintendent on housing projects was invalid and void where there was no proof in the record of the amount of money due and

owing to him under terms of contract which he made with investment company and party doing actual construction work. *Harsh Montana Corp. v. Locke*, — M —, 328 P 2d 926, 929.

#### 45-504. (8342) What property affected.

##### Estoppel

A performance bond given by a contractor whereby the contractor guaranteed to save the bank harmless from any and all liens and encumbrances in itself estops the contractor from asserting the priority of any lien of theirs over the bank's mortgage. *McGaffick v. Leigland*, 130 M 332, 303 P 2d 247.

Equitable estoppel will prevent a contractor from asserting a lien preference for an amount over the contract price against the first mortgagee where the contractor made representation as to the total price of the work to the mortgagee and knew that the loan would not have been granted had it been for a greater amount. *McGaffick v. Leigland*, 130 M 332, 303 P 2d 247.

#### 45-509. (8347) All persons interested may be made parties.

##### Where Principal Contractor is in Bankruptcy

Ordinarily, in a suit to establish a materialman's lien, the principal contractor is an indispensable party; but where plaintiff had named the contractor as a defendant but he had not been served and

the contractor's trustee in bankruptcy was also named and relief was sought against him, the absence of the principal contractor as a party was immaterial. *Monarch Lumber Co. v. Wallace*, 132 M 163, 314 P 2d 884.

### CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1001. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines.

45-1002. Lien for labor or supplies furnished for contractor.

45-1003. Manner of enforcing liens—duty of county clerks.

45-1004. How lien perfected.

45-1005. Date lien arises—preference over other liens—parity of liens.

45-1006. Priority of lien over mortgage or other liens.

45-1007. Lien for running account as single contract.

45-1008. Right of subcontractor against contract price—notice.

45-1009. Removal prohibited—injunction—lien follows property wrongfully removed.

45-1010. Notice to purchaser of oil and gas.

45-1011. "Owner" defined—leasehold interest—how affected.

45-1012. "Material" and "furnish" defined.

**45-1001. (8375) Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines.** Any person, corporation, or co-partnership who shall under contract, expressed or implied, with the owner of any leasehold for oil and gas purposes, or the owner of any gas pipe or oil pipeline, or with the trustee or agent of such owner, perform labor or furnish material, or services used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well, or oil or gas pipeline, or who shall furnish any material or services, or perform any labor in constructing or putting together any of the machinery used in digging, drilling, torpedoing, operating, completing or repairing any oil or gas well or oil or gas pipeline, whether or not such material is incorporated therein or becomes a part thereof, shall have a lien for the amount due therefor, including transportation and mileage charges connected therewith and interest from the date the same was due, upon the whole of such leasehold or oil or gas pipeline, the appurtenances thereon, and upon all material owned by the owner of such leasehold or oil or gas pipeline and used in the digging, drilling, torpedoing, completing, operating or repairing of any such oil or gas well or oil or gas pipeline, and upon all oil or gas wells located on such leasehold, and upon all oil or gas produced from such leasehold and the proceeds thereof inuring to the working interest therein as such working interest existed on the date the labor was first performed or materials or services were first furnished. Provided, however, that in the event labor is performed for, or materials or services are furnished to, the owner of the working interest in only a portion of the acreage covered by a lease, the lien granted herein shall be restricted to such portion of the acreage. Provided further, that the lien herein granted shall not extend to any royalty interests, overriding royalty interests or oil payments created prior to the date the first item of material or services are furnished or the date the first labor is performed.

**History:** En. Sec. 1, Ch. 45, L. 1917; re-en. Sec. 8375, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1923; amd. Sec. 1, Ch. 143, L. 1957.

**Amendment**

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

**45-1002. (8376) Lien for labor or supplies furnished for contractor.** Any person, co-partnership, or corporation who shall furnish such materials or services as a subcontractor or to a contractor or a subcontractor, or any person who shall perform such labor under a subcontractor with a contractor, or who, as an artisan or day laborer in the employ of such contractor or subcontractor shall perform any such labor, shall have a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to or for whom the labor is performed, or material or services furnished and used or employed or furnished to be used or employed in the drilling or operating of such oil and gas wells or in the construction of such pipeline.



**History:** En. Sec. 2, Ch. 45, L. 1917;  
re-en. Sec. 8376, R. C. M. 1921; amd. Sec.  
2, Ch. 143, L. 1957.

**Amendment**

The 1957 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**45-1003. (8377) Manner of enforcing liens—duty of county clerks.** The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens.

**History:** En. Sec. 3, Ch. 45, L. 1917;  
re-en. Sec. 8377, R. C. M. 1921; amd. Sec.  
2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143,  
L. 1957.

**Amendment**

The 1957 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**45-1004. How lien perfected.** Every person, corporation or co-partnership claiming a lien under this chapter shall file with the county clerk of the county in which such land, leasehold, or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under section 45-1002, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under contract as aforementioned.

**History:** En. 45-1004 by Sec. 4, Ch.  
143, L. 1957.

**45-1005. Date lien arises—preference over other liens—parity of liens.** The lien provided for in this chapter arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 45-1004, such lien shall be preferred to all other titles, charges, liens or encumbrances which may attach to or upon any of the property upon which a lien is given by this chapter subsequent to the date the lien herein provided for arises. All liens affixed by virtue of this chapter upon the same property shall be of equal standing.

**History:** En. 45-1005 by Sec. 5, Ch. 143,  
L. 1957.

**45-1006. Priority of lien over mortgage or other liens.** The lien herein provided for shall have no priority over other liens, encumbrances or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

**History:** En. 45-1006 by Sec. 6, Ch. 143,  
L. 1957.

**45-1007. Lien for running account as single contract.** All labor performed or materials or services furnished by any person entitled to a lien under this chapter upon the same leasehold for oil and gas purposes or the



same pipeline shall for the purposes of this chapter be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than six (6) months shall have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

**History:** En. 45-1007 by Sec. 7, Ch. 143, L. 1957.

**45-1008. Right of subcontractor against contract price — notice.** Nothing in this chapter shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated by such owner to be paid for such materials or services furnished or labor performed; provided, however, that the risk of all payments made to the original contractor shall be upon such owner if such payments be made after written notice from a person other than an original contractor is received by such owner at his residence or principal place of business which notice shall set forth the name and address of the claimant and the amount and nature of his claim. Payment by the owner to the original contractor of all or any part of the contract price, prior to the receipt of such notice, shall operate to discharge and satisfy all liens attaching to the property of such owner by virtue of this chapter to the extent of such payment. The owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

**History:** En. 45-1008 by Sec. 8, Ch. 143, L. 1957.

**45-1009. Removal prohibited — injunction — lien follows property wrongfully removed.** When any lien provided for by this chapter shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property, or any part thereof, or cause the same to be removed from the land or premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien. In the event such property, or some part thereof, is about to be removed or disposed of in violation of this section, the district court for the county where such property, or any part thereof, is located, may, upon the verified application of the holder of such lien, enjoin all persons alleged in such application to be about to remove or dispose of such property, or some part thereof, from removing or disposing of the same. In the event such property, or any part thereof, shall have been removed or disposed of in violation of this section, the holder of such lien shall be entitled in any action to foreclose the same to the appointment of a receiver to take possession of such removed or disposed of property wherever the same may be located within this state; provided, however, that this section shall not preclude the appointment of receiver in actions brought to foreclose liens given by this chapter upon any equitable grounds warranting such appointment.

**History:** En. 45-1009 by Sec. 9, Ch. 143, L. 1957.

**45-1010. Notice to purchaser of oil and gas.** Anything in this chapter to the contrary notwithstanding, any lien claimed by virtue of this chapter insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas, until written notice of such claim has been delivered to such purchaser at his residence or principal place of business. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. Such notice shall be delivered personally to the purchaser or by registered letter deposited in the United States mails. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the interest upon which the lien is claimed or the proceeds thereof, except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid.

**History:** En. 45-1010 by Sec. 10, Ch. 143, L. 1957.

**45-1011. "Owner" defined—leasehold interest—how affected.** As used in this chapter, the word "owner" includes a person holding any interest in the legal or equitable title, or both, and purchasers under executory contract. If a lien provided for in this chapter attaches to an estate less than the fee, forfeiture of such estate shall not impair any lien as to material, appurtenances and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this chapter attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled, shall not impair any lien as to material, appurtenances and fixtures located thereon and to which said lien attached prior to such failure.

**History:** En. 45-1011 by Sec. 11, Ch. 143, L. 1957.

**45-1012. "Material" and "furnish" defined.** As used in this chapter, the word "material" means material, fuel, machinery, equipment, appliances, buildings, structures, tools, bits or supplies but does not include drilling rigs or hoists or their integral component parts except wire lines, and the word "furnish" means sell or rent.

**History:** En. 45-1012 by Sec. 12, Ch. 143, L. 1957.      repealed all acts and parts of acts in conflict therewith.

#### **Repealing Clause**

Section 13 of Ch. 143, Laws 1957 re-

### **CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING**

**Section 45-1402. Claim of lien—when, where and how filed.**

**45-1402. Claim of lien—when, where and how filed.** Any person, firm, corporation or copartnership who is entitled to a lien under this act shall,

within sixty (60) days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops file in the office of the county clerk and recorder of the county in which said grains or crops were grown, a just and true account of the amount due for such services, labor or material after allowing all proper credits and offsets and containing a description of the grain or crops to be charged with such lien, the price agreed upon for such labor or service or material, or if no price was agreed upon the reasonable value of the same, together with the name of the person, firm or corporation for whom such labor or services were performed or material furnished, and a description of the lands as nearly as possible, upon which said grains or crops were raised, which statements of fact shall be verified by affidavit of the person, firm, corporation or copartnership claiming such lien, or his, their or its duly authorized agent or attorney, having knowledge of the facts.

**History:** En. Sec. 2, Ch. 205, L. 1953;  
amd. Sec. 1, Ch. 65, L. 1955.

**Effective Date**

Section 2 of Ch. 65, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 26, 1955.

**Amendment**

The 1955 amendment substituted "sixty (60)" for "ten (10)."



## TITLE 46—LIVESTOCK

- Chapter 5. Butchers' and meat peddlers' licences—duty as to hides of slaughtered cattle, 46-504.
6. Brands—recording—venting—livestock mortgages, 46-609.
8. Inspection of livestock before removal from county, 46-801, 46-802, 46-804, 46-806.
10. Estrays—disposal of, 46-1005, 46-1008.
15. Herd districts, 46-1501.
17. Animals running at large, 46-1717.
21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
23. Grass conservation—grazing districts, 46-2303, 46-2305, 46-2320, 46-2326.
27. County livestock protective committees, 46-2704.

### CHAPTER 2—LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE—INSPECTION AND DESTRUCTION OF DISEASED STOCK—LICENSING DAIRIES, MILK PLANTS AND SLAUGHTER HOUSES

#### 46-201. (3260) Creation of livestock sanitary board.

##### Diagnostic Laboratory—Bonds for Construction

Chapter 262 of Laws 1959 provided for the construction of a diagnostic laboratory and provided for the issuance of bonds to finance such construction. The act read as follows:

An act providing for the construction, furnishing and equipping a livestock sanitary board diagnostic laboratory building in Gallatin County, Montana; authorizing the state board of examiners to issue and sell bonds for such purpose; designating the funds from which said bond shall be paid; providing for an interest and sinking fund; approving expenditures of \$100,000.00 from the livestock sanitary board fund 151; pledging amounts to meet principal and interest on said bonds from the levy imposed by section 84-4211, R. C. M., 1947; providing a repealing clause and effective date of this act.

Section 1. The Montana state board of examiners is hereby authorized and directed upon the request of the Montana livestock sanitary board to cause to be constructed, furnished and equipped a livestock sanitary board diagnostic laboratory building in Gallatin County, Montana. Said building shall be erected upon a site on the present campus grounds of Montana state college or upon lands owned or hereafter acquired by the state in Gallatin County.

Section 2. The state board of examiners is hereby authorized upon the request of the Montana livestock sanitary board to issue and sell bonds for the purpose of constructing, furnishing and equipping the livestock sanitary board diagnostic laboratory building. The state board of examiners shall advertise for bids

on said building in the manner provided by law and shall let the contract for said building. The board shall require both the contractor and architect to give bonds to the state of Montana in such amount as the board may determine for the faithful performance of their respective duties and contracts. The total cost of constructing, furnishing, and equipping said building shall not exceed the sum of two hundred and ninety thousand dollars (\$290,000.00).

Section 3. For the purpose of providing funds for the constructing, furnishing and equipping of the livestock sanitary board diagnostic laboratory building authorized by this act, the state board of examiners is hereby authorized and empowered to issue and sell diagnostic laboratory building bonds of the state of Montana upon the request of the Montana livestock sanitary board in an amount not exceeding one hundred and ninety thousand dollars (\$190,000.00). Said bonds shall bear interest at a rate not exceeding four per cent (4%) per annum, payable semi-annually. The bonds shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe and shall be payable over such period of years, not exceeding ten (10), as said board may specify. All bonds shall be redeemable three (3) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denomination and form and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general and the secretary of state and shall be paid at the office of the state treasurer of the



state of Montana. The coupons attached to said bonds may bear the facsimile signatures of members of said board.

Section 4. Said bonds shall be sold by the state board of examiners at such time, in such manner and under such conditions and terms as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

Section 5. The cost of constructing, furnishing and equipping said building shall be payable out of the following funds and from them only: First, the Montana livestock sanitary board is hereby authorized to expend the sum of one hundred thousand dollars (\$100,000.00) from the livestock sanitary board fund 151 which fund is derived from a one and one-half (1½) mill levy on all livestock and is the separate tax levied pursuant to the provisions of section 84-5211, R. C. M., 1947. Second, from the proceeds of the bond issue as hereinbefore provided, which bonds shall be retired and interest paid from the proceeds of the tax levy authorized by section 84-5211, R. C. M., 1947, in

an amount fixed and determined by the state board of examiners at the time of the sale of the bonds as necessary for the payment of principal and interest of the bonds. Provided, however, that the income from said tax levy over the amount necessary to pay principal and interest of the bonds may be used by the Montana livestock sanitary board as provided by section 84-5211, R. C. M., 1947.

Section 6. To provide for the payment of the interest and principal of bonds authorized by this act there is hereby created a special fund to be known as the diagnostic laboratory interest and sinking fund. With the consent and approval of the Montana livestock sanitary board, additional money from the funds realized from the tax levy provided in section 84-5211, R. C. M., 1947, may be paid by the state board of examiners into the interest and sinking fund in any one year for the payment and retirement of optional bonds.

Section 7. The expenditure and dedication of funds herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

Section 8. All acts and parts of acts in conflict herewith are hereby repealed.

Section 9. This act shall be in full force and effect from and after its passage and approval. Approved March 13, 1959.

#### 46-243. (3293) Personal liability—members and officers of board.

##### Operation and Effect

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by the officers acting under an

emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, — M —, 323 P 2d 29, 31.

### CHAPTER 5—BUTCHERS' AND MEAT PEDDLERS' LICENSES— DUTY AS TO HIDES OF SLAUGHTERED CATTLE

Section 46-504. License or inspection, when not necessary.

**46-504. License or inspection, when not necessary.** Any person who kills beef or veal in good faith for his own use shall not be required to have such meat inspected or stamped, nor shall he be required to procure any license provided for in this act.

**History:** En. as part of Sec. 3, Ch. 172, L. 1931; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 67, L. 1959.

##### Amendment

The 1959 amendment deleted the words "or for the use of himself and three (3) neighbors" which appeared after the words "for his own use."

##### Repealing Clause

Section 2 of Ch. 67, Laws 1959 repealed all acts and parts of acts in conflict therewith.

##### Effective Date

Section 3 of Ch. 67, Laws 1959 provided the act shall be in full effect from and after its passage and approval. Approved Feb. 27, 1959.

## CHAPTER 6—BRANDS—RECORDING—VENTING— LIVESTOCK MORTGAGES

Section 46-609. Fees for recorder of marks and brands.

### 46-605. (3303) Designation of years for re-recording brands.

#### Operation and Effect

Where the holder of a registered brand died and thereafter the brand expired without being re-registered, the brand was then open to record by anyone; hence, mandamus brought by the administrator of the deceased person at a later date

would not lie to require the recorder of marks and brands to record the brand in the administrator's name as there is no clear legal duty upon the recorder to do what the administrator required by his complaint. *Benolken v. Miracle*, 129 M 495, 289 P 2d 953, 954.

**46-609. (3307) Fees for recorder of marks and brands.** The general recorder of marks and brands shall charge and collect for recording each mark or brand the sum of eight dollars (\$8.00), and for re-recording each mark or brand the sum of four dollars (\$4.00), and for a certified copy of any such record and each duplicate certificate one dollar (\$1.00), and all fees so collected shall be paid into the livestock commission fund; providing, however, that not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor.

**History:** En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959.

brands from \$6.00 to \$8.00 and from \$3.00 to \$4.00 respectively.

#### Repealing Clause

Section 2 of Ch. 65, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### Amendment

The 1959 amendment raised the fees for recording and re-recording marks or

## CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM COUNTY

Section 46-801. Inspection of livestock before removal from county.

46-802. Duties of state stock inspectors and deputy state stock inspectors.

46-804. Fees for inspection and livestock transportation permit.

46-806. Penalties for violations of act.

### 46-801. Inspection of livestock before removal from county.

(1) to (5). \* \* \* [Subdivisions (1) to (5), same as parent volume.]

(6) The provisions of section 1 of this act (this section) shall not apply.

(a) to (d). \* \* \* [Subsections (a) to (d), same as parent volume.]

(e) to any animal or animals when driven on the hoof from one (1) county to an adjoining county within the state for the purpose of shipment by railroad or delivery to a licensed public market by any person who has been the owner of said animal or animals for a period of at least three (3) months;

(f). \* \* \* [Same as parent volume.]

(g) to any such animal or animals when hauled by truck or trailer from one county to an adjoining county within the state for the purpose of shipment by railroad at which shipping point the livestock commission of the state of Montana maintains a stock inspector or where a deputy state stock inspector is available, and for which a transportation permit has been obtained in the manner provided by law.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110; L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957.

#### Amendment

The 1957 amendment in subd. (6) (e) deleted the word "such" which appeared between the words "any" and "animal" and added subsec. (g) to subd. (6).

**46-802. Duties of state stock inspectors and deputy state stock inspectors.** It shall be the duty of state stock inspectors and deputy state stock inspectors, upon the application of the owner of any such animal referred to in section 46-801, or the duly authorized agent of such owner, to inspect all such animals intended for removal or shipment as in this act provided, and to issue his certificate of inspection therefor, if it shall appear with reasonable certainty that the applicant is the owner of such animal or has the lawful right to the possession thereof.

The inspection herein provided for shall include such examination of the animal and all marks and brands thereon as to identify the same. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or of the applicant for inspection, the class of the animal as specified in section 46-801, the marks and brands, if any, upon the animal, and such other information and upon such form of certificate as the livestock commission may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy thereof shall be furnished by the inspector to the owner or shipper of the animal, and one (1) shall be filed by the inspector with the secretary of the livestock commission at Helena, Montana, within five (5) days.

If it shall appear with reasonable certainty that the applicant is the owner of such animals or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of any such animal or animals to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a railroad shipping point in an adjoining county, shall issue to such person a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign such permit certifying the brands, description and destination of such animals. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or animals and the name and address of the person actually transporting the animal or animals if different than the owner, the kind of animal or animals, the marks and brands, if any, upon the animal or animals, a description of the vehicle or vehicles to be used to transport such animal or animals to include the license number of such vehicle or vehicles and such other information and upon such form of permit as the livestock commission may from time to time require. Any such permit so issued shall be good for shipment within 36 hours from date and time of issue; provided, however, that permits not used within this time limitation must be returned to the issuing officer to be canceled and to release permittee from performance. One copy of such permit shall



be retained by the inspector or sheriff's office, one copy shall be filed by the inspector or sheriff's office with the secretary of the livestock commission at Helena, Montana within five (5) days of the date of issue, and one copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the animal or animals which such copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the animal or animals are delivered.

**History:** En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957.

#### **Amendment**

The 1957 amendment in the first sentence of the third paragraph inserted the words "or any sheriff or deputy sheriff"

"or delivered directly to a railroad shipping point in an adjoining county" and "or transportation permit"; in the second sentence inserted the words "or transportation permit" and in the fourth sentence inserted the words "or sheriff's office" each time they appear and inserted the words "or shipping point."

#### **46-804. Fees for inspection and livestock transportation permit.**

(a) For the service of inspection herein provided for before removal from county, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars (\$3.00) for from twelve (12) head to thirty (30) head and shall receive ten cents (10¢) per head for each animal over thirty (30) head; for the issuance of a market consignment permit or transportation permit herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for twelve (12) to thirty (30) head and one dollar (\$1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state



stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957.

#### Amendment

The 1957 amendment made numerous changes in subd. (a) of this section. For subdivision prior to amendment see parent volume.

**46-806. Penalties for violations of act.** (a) Any person who removes or causes to be removed from any county in the state any animal or animals of the class referred to in section 46-801; (1) without having the same inspected prior to removal where such inspection is required by law; (2) without obtaining a market consignment permit or transportation permit, where such permits are obtainable by law; (3) and does obtain a market consignment permit for such animal or animals but does not deliver such animal or animals transported thereunder to the livestock market designated in the market consignment permit; (4) and does obtain a transportation permit for such animal or animals but does not deliver such animal or animals transported thereunder to the destination as shown on the transportation permit and fails to have such livestock so transported inspected at point of destination or does not file a loading tally with the carrier as provided in section 46-1008; shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(b) to (f). \* \* \* [Subdivisions (b) to (f), same as parent volume.]

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957.

#### Amendment

The 1957 amendment in subd. (a) substituted "(2) without obtaining a market consignment permit or transportation permit, where such permits are obtainable by law" for "(2) without obtaining a market

consignment permit for such animal or animals, where such market consignment permit is obtainable by law" and added all of (4).

#### Repealing Clause

Section 5 of Ch. 142, Laws 1957 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 10—ESTRAYS—DISPOSAL OF

Section 46-1005. "Estray," as herein used, defined.

46-1008. Shipment of stray cattle—duty of shipper and railroad agents—petition for inspection.

**46-1005. (3337) "Estray," as herein used, defined.** An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, or calf, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the post office designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

**History:** En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959.

**Amendment**

The 1959 amendment deleted the words "over one year old" which appeared after the words "colt" and "calf."

**Repealing Clause**

Section 2 of Ch. 112, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 112, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 2, 1959.

**46-1008. (3341) Shipment of stray cattle—duty of shipper and railroad agents—petition for inspection.** Every person, agent, firm, corporation, pool or roundup association, who shall ship cattle by railroad to any market where Montana livestock inspectors are maintained, may ship with their own cattle any estrays which may be among them, but they must before shipment, or at the time of loading same on the cars for shipment, carefully and as accurately as possible inspect or tally the brand on such cattle, whether their own or estrays, making a list in duplicate, which list shall state the date of loading, name of shipper, description of brands on each animal, number and class of the cattle bearing such brand, destination, name of the commission firm to whom consigned, and the name of the person in charge of the shipment except that in the case of cattle not owned by the shipper and which are marked with a recorded brand, or where the owner is known to be someone other than the shipper, the shipper must obtain the written consent of such owner or owners, or the written consent of a state stock inspector or a deputy state stock inspector before shipment of such cattle. It shall be the duty of the railroad agent at the point of loading to require from the shipper lists as described in this act, and to forward, within twenty-four (24) hours after loading, one copy to the livestock commission at Helena, Montana, and another copy to the Montana brand inspector at the point of destination. However, in any county or counties where there has been established an association of livestock people, the livestock commission on the receipt of a petition from an association shall require that all cattle shipped by rail from the respective county or counties be inspected before loading by a state stock inspector or deputy state stock inspector. The petition must be signed

by at least fifty-one per cent (51%) of the owners of cattle in the county, and such petitioners owning at least fifty-five per cent (55%) of the cattle as shown by the most recent completed assessment records of the county assessor.

**History:** En. Sec. 1, Ch. 94, L. 1907; Sec. 1820, Rev. C. 1907; re-en. Sec. 3341, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1923; amd. Sec. 1, Ch. 137, L. 1943; amd. Sec. 1, Ch. 99, L. 1957.

#### Repealing Clause

Section 2 of Ch. 99, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1957 amendment added the last two sentences.

### CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

#### 46-1401. (3374) Legal fences defined.

##### References

Cited in *Thompson v. Yellowstone Livestock Comm.*, 133 M 403, 324 P 2d

412, 421; *Thompson v. Mattuschek*, — M —, 333 P 2d 1022, 1026.

#### 46-1409. (3378) Liability of owners of stock for trespass.

##### Fences

Under common law, livestock must be fenced in, but under range law, they must be fenced out. *Thompson v. Mattuschek*, — M —, 333 P 2d 1022, 1025.

##### Removal of Line Fence

In action to restrain trespass by livestock and to recover for partial loss of a growing crop of barley then being trampled and grazed down by livestock after

defendant had removed a long-standing section line fence bounding one side of a field which plaintiff had just planted to barley, complaint alleging a malicious removal of the fence was sufficient to state a cause of action for trespass of cattle upon plaintiff's property although he did not allege a secure enclosure of the barley field but did so testify. *Thompson v. Mattuschek*, — M —, 333 P 2d 1022, 1026.

### CHAPTER 15—HERD DISTRICTS

Section 46-1501. Herd districts—creation, size, location—dissolution—exclusion of government land—records.

**46-1501. (3384) Herd districts—creation, size, location—dissolution—exclusion of government land—records.** (a) Herd districts may be created in any county in the state of Montana to contain twelve (12) square miles or more, lying not less than one (1) mile in width, outside of the incorporated cities; excepting only that herd districts may be created containing not less than six (6) nor more than fifty-four (54) square miles, lying not less than two (2) miles in width, when such territory joins and is contiguous with the boundaries of a city having a population of ten thousand (10,000) or more and such territory so to be created in a herd district has a suburban population of not less than two hundred (200) people; upon petition of owners or possessors of fifty-five per centum (55%) of the land in such district, and providing twenty-five per centum (25%) or more of the land in such district is in actual cultivation, or being used for residential purposes.

In formation of such a district the entire holding of any owner or lessee must be included unless such owner or lessee consent that less than his



entire contiguous holdings be included in the petition. And such petition shall designate the months of the year when herd district is effective, and upon presentation and filing of such petition, properly signed, giving outside boundaries and description of proposed district and the post-office address of the signers thereto, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county, upon receipt thereof, shall set a date for hearing protests and verifying the signatures thereto, and shall give not less than twenty (20) days' notice of the same by three (3) publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to such notices the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The said commissioners may then establish the district, but such district shall be established only in such manner that the district will be reasonably regular and symmetrical in shape, or practicable in relation to the geographical features of such district.

Should it appear to such county commissioners after such hearing that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the county commissioners must give notice by four (4) weekly publications in some newspaper nearest the district of the creation of such districts, also stating period such districts will be in effect, and such districts shall not be in effect until thirty (30) days have expired after the order. Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created, and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof. Should the signature of lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest. And the board of county commissioners shall remove the name of the lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

(b) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of fifty-five per cent (55%), or more of the lands lying within such district, and that less than twenty-five per cent (25%) of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting; and at said meeting by its order the said board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for three (3) successive weeks in some newspaper of general circulation in the county.

At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties.



At the conclusion of any such hearing if the board of county commissioners shall find that notice of hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of fifty-five per cent (55%), or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, and that less than twenty-five per cent (25%), of the lands included in such district are in actual cultivation, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the herd district affected thereby shall be dissolved for all purposes thereafter.

(c) Any tract of land embraced within any established herd district and which contains eighteen (18) government sections of land, or more, so located that at least one-fourth ( $\frac{1}{4}$ ) of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county commissioners of the county wherein the said district has been established on a like petition, notice and hearing and by a like order as in the case of proceedings for dissolving herd districts; provided that when the exclusion of any such tract of land from an existing herd district is sought the petition shall describe the tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of fifty-five per cent (55%), or more of the lands lying within the boundaries of the tract to be excluded, and that less than fifteen per cent (15%), of the lands included in such tract is in actual cultivation; and provided further that in any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such findings and of the proceedings had upon such petition the tract of land described in the petition which shall be further set forth with common certainty in the order is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

**History:** En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959.

#### **Amendment**

The 1959 amendment, in the first clause of subd. (a), decreased the minimum area from 54 to 12 square miles and the minimum width from three to one mile; and

added, at the end of the first paragraph of subd. (a) the words "or being used for residential purposes."

#### **Repealing Clause**

Section 2 of Ch. 209, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### **References**

Cited in *Thompson v. Mattuschek*, — M —, 333 P 2d 1022, 1025.

## CHAPTER 16—HORSE HERD DISTRICTS

## 46-1601. (3389.2) Horse herd districts—size—location—petition, etc.

## References

Cited in Thompson v. Mattuschek, —  
M —, 333 P 2d 1022, 1025.

## CHAPTER 17—ANIMALS RUNNING AT LARGE

Section 46-1717. Female breeding cattle, purebred bull to accompany.

## 46-1717. (3404) Female breeding cattle, purebred bull to accompany.

Any person or persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon said range or national forest reserve one purebred graded bull of a recognized beef type, not less than fifteen (15) months nor more than eight (8) years of age, for every thirty (30) head of female breeding cattle, pastured upon such range or national forest reserve; provided, however, that any two (2) or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two (2) or more users thereof does not exceed thirty (30) head.

A purebred bull as contemplated by this act must be a bull having a registration certificate from the breeding association of its particular breed. A graded bull as defined in this act, shall be one selected by a committee of permittees.

History: En. Sec. 2, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3404, R. C. M. 1921; amd. Sec. 1, Ch. 40, L. 1957.

## Repealing Clause

Section 2 of Ch. 40, Laws 1957 repealed all acts and parts of acts in conflict therewith

## Amendment

The 1957 amendment inserted the word "graded" between the words "purebred" and "bull" in the first paragraph and added the second paragraph.

## Effective Date

Section 3 of Ch. 40, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 21, 1957.

## 46-1718. (3405) Penalty for violation of act.

## History Correction

History: En. Sec. 3, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3405, R. C. M. 1921.

## 46-1719. (3406) Taking up and castrating bulls, notice to owner.

## History Correction

History: En. Sec. 4, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3406, R. C. M. 1921.

## Inquiry as to Ownership

Where defendant found a purebred dairy bull running at large upon his pasture it would not have been either un-

natural or unreasonable for the defendant to have contacted his neighbor, the plaintiff, to ascertain what, if anything, either knew about the bull. By failing to do this the defendant was liable to the plaintiff, the owner of the bull, for castrating it. Holden v. Varner, 128 M 211, 272 P 2d 1008, 1010.

CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY  
ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license fee on sheep.  
46-2104. Duty of county commissioners—petition of sheep owners.

**46-2102. County commissioners may require per capita license fee on sheep.** To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding ten cents (10¢) per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, co-partnerships, corporations, trusts and estates.

**History:** En. Sec. 2, Ch. 206, L. 1943;  
amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1,  
Ch. 87, L. 1957.

**Amendment**

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

**46-2104. Duty of county commissioners—petition of sheep owners.** In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least fifty-one per cent (51%) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of ten cents (10¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of



at least fifty-one per cent (51%) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied. If the resident owners of at least fifty-one per cent (51%) of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of ten cents (10¢) per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

**History:** En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957.

#### **Amendment**

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

#### **Repealing**

Section 3 of Ch. 87, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 87, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 4, 1957.

### **CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS**

- Section 46-2303. Montana grass conservation commission—membership and terms.  
 46-2305. Secretary—compensation.  
 46-2320. Distribution of grazing preferences.  
 46-2326. Running livestock at large or in herd without permit forbidden—liability of owner—penalty—procedure—release to owner.

**46-2303. Montana grass conservation commission—membership and terms.** There is hereby created the Montana grass conservation commission of the state of Montana which commission shall be composed of five (5) members with the powers and duties specified in this act. Such members shall be appointed by the governor of the state and approved by the senate for four-year terms or until their successors are appointed and qualified; provided, however, three (3) members of the first five (5) appointed after the passage and approval of this act shall serve for terms as follows: One (1) for a one-year term and one (1) for a two-year term and one (1) for a three-year term; at the expiration of these terms all subsequent appointments except those filling vacancies in unexpired terms, shall be for four (4) years. All regular terms of such members shall begin on April first. The governor, giving full consideration to representation to large and small operators, shall appoint one (1) representative member and livestock operator who is either an officer or a permittee member of an organized state grazing district, from each of the following groups:

- (1) One (1) member from the Montana Stockgrowers' Association;
- (2) One (1) member from the Montana Woolgrowers' Association;
- (3) One (1) member from the County Commissioners' Association;
- (4) One (1) member from one (1) of the cooperative state grazing districts, and the fifth member to be a person representing the general public



familiar with the livestock industry. If a vacancy occurs on the commission the governor shall, within thirty (30) days, fill such vacancy for the unexpired term from the group from which said vacancy shall occur. Expired terms shall be filled by appointment from the group to which the retiring member belonged.

**History:** En. Sec. 3, Ch. 208, L. 1939; word "upon" and in the fourth sentence substituted "permittee member" for "director."  
amd. Sec. 1, Ch. 257, L. 1955.

#### Amendment

The 1955 amendment in the third sentence substituted the word "on" for the

**46-2305. Secretary—compensation.** The commission shall select and appoint a secretary at a salary of not to exceed five hundred dollars (\$500.00) per month. The secretary shall be the executive officer of the commission and shall be controlled and directed by the rules and regulations established by the commission from time to time and applicable to the duties of his office. The commission shall fix the salary of the secretary.

**History:** En. Sec. 5, Ch. 208, L. 1939; word "upon" and in the fourth sentence substituted "permittee member" for "director."  
amd. Sec. 1, Ch. 13, L. 1949; amd. Sec. 1, Ch. 124, L. 1953; amd. Sec. 2, Ch. 257, L. 1955.

#### Amendment

The 1955 amendment inserted the words "at a salary of not to exceed five hun-

dred dollars (\$500.00) per month" in the first sentence; substituted the word "The" for the words "and said" which begins the second sentence and deleted from the end of the section the words "not to exceed four hundred dollars (\$400.00) per month."

**46-2320. Distribution of grazing preferences.** When a state district is organized, grazing preferences shall be distributed in the following manner: Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference. If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference. If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range for any three (3) or any two (2) consecutive years in the five-year period immediately preceding June 28, 1934; or in the case of districts organized after March 15, 1945, preferring those that have used the range five (5) years immediately preceding the organization of such districts. When such temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by such permittee within or near the district for a period of any combination of four (4) years out of five (5), then the forage-producing lands owned or controlled by such permittee may be considered dependent commensurate property, and upon application, the district may accordingly grant such permittee membership and preference in the district providing an application had been made for temporary rights for each of the five (5) years. Provided, however, such temporary permits shall at all times be merely privileges granted from year to year, and their possession shall in no event establish a preference

right unless such preference right be expressly granted by the district and in the manner herein provided.

If reduction in grazing privileges become necessary, operators with temporary permits will be reduced first on a proportionate basis. When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.

**History:** En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955.

"districts" singular the last time it appears in the fourth sentence of the first paragraph and the word "reductions" singular in the first sentence of the second paragraph.

**Amendment**

The 1955 amendment made the word

**46-2326. Running livestock at large or in herd without permit forbidden—liability of owner—penalty—procedure—release to owner.** (1) No owner or person in control of livestock shall permit the same to run at large, or under herd, within the exterior boundaries of any state district, unless the owner or person in control of such livestock shall first obtain a grazing permit for same from such state district; and the owner or person in control of such livestock running at large, or under herd, within a state district, without a permit from the district, or in excess of such permit, shall be liable for all damages sustained thereby by any member, permittee or state district. If any such livestock wrongfully enters upon premises within such district, the owner or person in control of such trespassing livestock, who willfully or negligently permits same to run at large within the district, without first obtaining a permit therefor from the district, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not less than ten dollars (\$10.00), nor more than five hundred dollars (\$500.00), and in addition to said punishment, shall be liable for all damages sustained thereby to the party entitled thereto; provided that this provision shall not require any person to obtain a grazing permit to graze livestock upon land owned or controlled by him within such state district, if the stock so grazed is restrained from running at large within such state district and from grazing upon any other lands within the state district.

(2) The state district or its duly authorized agent controlling the land upon which such wrongful entry is made by trespassing livestock, may take into its possession such livestock and shall reasonably care for same while in its possession and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession. The state district taking up such livestock shall, within seventy-two (72) hours after taking possession thereof, notify said owner, owners, or person in charge thereof, by a notice in writing, describing said livestock by number of animals and brands thereon, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the same thereafter, such charges not to exceed fifty cents (50c) per animal unit per day, and describing by general description, the

location of the premises upon which said livestock is held, and requiring such owner or owners, within ten (10) days after receiving said notice, to take said livestock away after making full payment of all damages and costs of said livestock.

(3) In case the parties do not agree as to the amount of damages, the state district taking up such livestock, may, at the expense of the owner, retain a sufficient amount of such livestock to cover the amount of damages claimed by the state district. Provided, however, that the owner may, upon furnishing a good and sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by said state district in a civil action to foreclose its lien, have returned to him all livestock held as aforesaid, and said state district shall be liable to such owner for any loss or injury to said livestock accruing through the state district's lack of reasonable care. If the state district taking up livestock shall fail to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the former shall bear the expense of keeping and feeding same while in its possession. Such notice may be given by personal service on the said owner, owners or person in charge thereof, or by leaving said notice at his usual place of residence with some member of his family over the age of fourteen (14) years, or by sending said notice by prepaid registered mail, addressed to his last known place of residence. Said service by registered mail shall be deemed complete upon the deposit of said notice in the post office.

(4) Upon demand, the state district or its authorized agent controlling the land, or party in charge of such livestock, shall release and deliver possession of such livestock to the owner or person entitled thereto, upon payment of damages and charges; but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner or persons in control of such livestock, as hereinbefore provided. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock, may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within sixty (60) days after payment.

(5) If after due diligence to discover the owner or possessor of such livestock, such owner or possessor can not be found, or the ownership of such livestock discovered, the state district taking up such livestock, or said owner or claimant shall refuse to pay the amount of damages or charges, or furnish bonds therefor, as herein provided, the party taking up such livestock shall, within ten (10) days from the time that said livestock was taken up, deliver to the sheriff or a constable of the county in which the livestock was taken up, a statement containing the information required to be given in the notice, hereinbefore set out, and in addition thereto, he shall mail, by prepaid registered mail, a copy of said statement addressed to the nearest state livestock inspector. Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell, at public auction, the livestock so taken up.

(6) Such livestock shall be sold on five (5) days' notice posted at the



courthouse of each county in which any portion of the district lies and posted in three (3) public places in such county, one of which shall be within the district. Provided, however, that such sheriff may require from the state district a good and sufficient bond, conditioned that the state district has used reasonable diligence to discover the owner of such stock and to notify him in the premises and that all requirements of law on the part of the state district to be performed in the premises have been performed and indemnifying the sheriff against all liability for the sale of said livestock except as to his own failure to perform the things required of him by law.

(7) The proceeds of the sale shall, by the sheriff, after first deducting his costs and expenses, be applied to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims and costs of the party taking up such livestock, and the remainder, if any, may be paid over to the owner of such livestock, if known, and if the owner is not known, then such remainder shall be deposited with the county treasurer, who shall keep the same in a public fund to be designated state grazing district fund (giving the name of the district). A separate fund, styled as above, shall be kept by the county treasurer for each of said districts within his county. The county treasurer shall make a record of the number and type of animals sold and the brands on same, if any, the amount received for same and the amount of deductions, which record shall be open to public inspection; and any person making claim to the board of county commissioners at any time within one (1) year from date of sale, of ownership of such livestock and submitting proof of ownership to such board, with such claim to the satisfaction of such board, shall be entitled to receive such excess received from the sale of such livestock. Any money received from the sale of any such livestock, which shall not be so claimed within one (1) year after such sale, shall, at the expiration of said period, be transferred to the general fund of the county.

(8) No officer, board or employee of any county or of any state district, nor any employee of such officer or board shall be liable for any act performed in good faith in discharging official duties under this act; and all such acts shall be presumed to have been in good faith and in conformity with this act.

(9) The state district, or the party taking up such trespassing livestock, may cause same to be impounded at any suitable place within the state district, or within five (5) miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

(10) Any person taking or rescuing from the possession of a state grazing district or an agent thereof any animal taken up and impounded pursuant to this section shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding two hundred dollars (\$200.00).

(11) Regarding fences within the external boundaries of state districts; the cost of construction and maintenance of fence-enclosing lands con-



trolled by any member, nonmember or state district within the external boundaries of such state district, shall be borne by such member, nonmember or state district, unless otherwise provided for in the duly approved by-laws of such state district.

(12) In the event of the adoption of provisions to the by-laws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by such cost of construction and maintenance of fence, the state district's proportionate share of such costs and maintenance shall be financed only by assessments levied by the state district against the permittee members of the district upon consent thereto by fifty-five percentum (55%) of such permittee members.

(13) Nothing contained herein shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955.

subds. (10) and (11) to (11) and (12) and added subd. (13).

#### Separability Clause

Section 6 of Ch. 257, Laws 1955 read "If a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Repealing Clause

Section 5 of Ch. 257, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1955 amendment deleted a repetition of the phrase "and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession" in subd. (2); in subd. (3) deleted the word "of" which appeared in the proviso clause between the words "him" and "all"; inserted new material for subd. (10) and renumbered former

## CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

Section 46-2704. Tax levy—special fund.

**46-2704. Tax levy—special fund.** Said county livestock protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25c) per head on all assessable cattle in the county on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

**History:** En. Sec. 4, Ch. 168, L. 1953; amd. Sec. 1, Ch. 10, L. 1955.

#### Amendment

The 1955 amendment added the word "assessable" between the words "all" and "cattle" and deleted the words "over one (1) year old" which appeared after the words "in the county."

#### Repealing Clause

Section 2 of Ch. 10, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 10, Laws 1955 provided the act should be in full force and effect from and after its passage and approval. Approved February 5, 1955.

## TITLE 47—LOANS

Chapter 2. Consumer loan act, 47-201 to 47-228.

### CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

#### 47-101. (7702) Loan defined.

##### References

Cited or applied in State ex rel. Olsen  
v. Sundling, 128 M 596, 281 P 2d 499, 502.

#### 47-124. (7725) Legal interest.

##### Collateral References

Rate of interest for damages for period  
before judgment for injury to, or deten-  
tion, loss or destruction of, property. 36  
ALR 2d 337.

### CHAPTER 2—CONSUMER LOAN ACT

- Section 47-201. Act, how cited.  
47-202. Definitions.  
47-203. Office of consumer loan commissioner, employees, appointment, compensation—commissioner—powers and duties—adoption of rules and regulations by commissioners.  
47-204. Scope—exemptions—invalidity of contracts in violation.  
47-205. Loans in excess of \$1,000 by licensee prohibited.  
47-206. License, when required—display—nontransferable—removal—license year, fees—consumer loan administration fund—use.  
47-207. Issuance or denial of license, when—mailing of denial order and findings.  
47-208. Conduct of other business in same office.  
47-209. License renewal fee—failure to pay—effect—license—when in force.  
47-210. Rates and charges—refunds—past due amounts—excess charges, effect.  
47-211. Installment payment—contract period.  
47-212. Copy of contract or statement of contents—receipts—return of note.  
47-213. Confessions of judgment—incomplete instruments forbidden.  
47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.  
47-215. Investigations, when—who may be investigated.  
47-216. Annual examinations—cost of examinations—limitations.  
47-217. Records—time kept.  
47-218. Annual report—contents—verified—publication.  
47-219. Advertising—limitations.  
47-220. Wage assignments—limitations.  
47-221. Surrender of license—surrender shall not affect liability for acts.  
47-222. Pre-existing lawful contract not affected, when.  
47-223. Revocation and suspension of license, when.  
47-224. Reinstatement, when.  
47-225. Appeals, procedure.  
47-226. Access to records—witnesses.  
47-227. Cease and desist orders—injunctions—receivers.  
47-228. Penalties.

47-201. Act, how cited. This act may be cited as the Montana consumer loan act.

History: En. Sec. 1, Ch. 283, L. 1959.

##### Title of Act

An act relating to loans and interest  
and other charges and expenses on loans;

to define "consumer type loan business"  
and certain other terms; to regulate and  
license the business of making consumer  
type loans in the amount of one thousand  
dollars (\$1,000) or less; to create the

office of consumer loan commissioner, and to provide for the appointment and compensation of a consumer loan commissioner and to prescribe the powers, duties, authority and jurisdiction of such commissioner; to authorize the adoption and promulgation of rules and regulations; to make certain acts unlawful and to provide penalties and forfeitures for violations of this act; to exempt certain businesses from the provisions of this act; to prescribe certain license and other fees; to create a "consumer loan administration fund" to be used to administer and enforce the provisions of this act; to provide for the issuance, refusal, suspension

and revocation of licenses; to provide for the refund of certain precomputed charges where a loan is paid prior to maturity; to authorize and regulate the issuance of certain insurance in connection with consumer type loans in the amount of one thousand dollars (\$1,000) and less; to authorize investigations and examinations by the commissioner and to provide for examination fees; to require licensees to keep certain records and to make certain reports; to regulate wage assignment; to provide for appeals from any action or order of the commissioner; and repealing all acts and parts of acts in conflict herewith.

**47-202. Definitions.** Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

- (a) "Person" shall mean individuals, partnerships, associations, corporations and any and all legal entities in the loaning business.
- (b) "License" shall mean the license provided for by this act.
- (c) "Licensee" shall mean the person holding any such license.
- (d) "Commissioner" shall mean the consumer loan commissioner.
- (e) "Consumer type loan business" shall mean the business of making loans of one thousand dollars (\$1,000) or less generally repayable in substantially equal installments.

**History: En. Sec. 2, Ch. 283, L. 1959.**

**47-203. Office of consumer loan commissioner, employees, appointment, compensation—commissioner—powers and duties—adoption of rules and regulations by commissioners.** (a) There is hereby created the office of consumer loan commissioner, who shall be the bank examiner of the state of Montana. He is hereby authorized to appoint, employ, remove and prescribe the duties and fix the compensation of such employees as are necessary to properly discharge the duties of his office.

(b) All powers and duties of regulation and supervision conferred by this act are vested in the commissioner. The commissioner shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of this act. All rules and regulations of general application shall be filed in the commissioner's office and be open to the public. A copy of every such rule or regulation shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date; provided, however, the failure of a licensee to receive a copy of such rules or regulations shall not exempt him from the duty of compliance with such rules and regulations lawfully promulgated hereunder.

(c) All valid rules and regulations adopted under the provisions of this act shall be binding upon all licensees and enforceable by the commissioner through the power of suspension or revocation of licenses.

**History: En. Sec. 3, Ch. 283, L. 1959.**

**47-204. Scope—exemptions—invalidity of contracts in violation.** (a) Scope; prohibiting engaging in the business of making loans of one



thousand dollars (\$1,000) or less, except after having obtained a license; exemptions. On or after July 1, 1959, no person shall engage in the business of making loans or advances of money on credit in amounts of one thousand dollars (\$1,000) or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance, any charges whether for interest, compensation, consideration, or expense which in the aggregate are greater than ten per cent (10%) per annum, except as provided in and authorized by this act. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, Morris Plan companies, or a person engaged in business as a licensed pawnbroker, or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this act, nor shall any of the provisions of this act, relating to licensees, apply to any such exempted person who is not licensed hereunder.

(b) Evasions. The provisions of subsection (a) shall apply to any person who seeks to evade its applications by any device, subterfuge or pretense whatsoever.

(c) Invalidity; penalty. Any contract of loan in the making or collection of which any act shall have been done which violates subsection (a) of this section shall be void and the lender shall have no right to collect, receive or retain any principal, interest, or charges whatsoever.

**History:** En. Sec. 4, Ch. 283, L. 1959.

**47-205. Loans in excess of \$1,000 by licensee prohibited.** No licensee under the provisions of this act shall lend money in a total sum greater than one thousand dollars (\$1,000.00) to any borrower.

**History:** En. Sec. 5, Ch. 283, L. 1959.

**47-206. License, when required—display—nontransferable—removal—license year, fees—consumer loan administration fund—use.** (a) On and after July 1, 1959, each place of business operated under this act shall have and properly displayed therein, a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this act as to each license. Application for a license shall be on a form prescribed and furnished by the commissioner. A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the commissioner.

(b) Submitted with each application shall be fifty dollars (\$50) as an investigation fee and one hundred twenty-five dollars (\$125) as a license fee, which license fee shall be returned to the applicant if the application is denied. The license year shall be the calendar year and the license fee for any period less than six (6) months shall be sixty-two dollars fifty cents (\$62.50). Each license shall remain in force until surrendered, suspended or revoked.

(c) All moneys collected under the authority of this act shall be paid into the state treasury by the commissioner.

**History:** En. Sec. 6, Ch. 283, L. 1959.



**47-207. Issuance or denial of license, when—mailing of denial order and findings.** (a) Within thirty (30) days after an application for license is filed with the commissioner, together with the required fees, the commissioner shall issue the license if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this act, or enter an order denying same, if he shall find to the contrary: Provided, however, that any person engaged in the consumer type loan business on December 31, 1958 shall receive a license upon filing the required application and fees within thirty (30) days after the effective date of this act.

(b) A copy of the order granting or denying a license, together with a summary of the findings thereon, shall be filed in the office of the commissioner and shall be public record. A copy of the order denying a license, together with a summary of the findings thereon, shall be mailed postage prepaid, to the applicant at the address stated in the application.

**History:** En. Sec. 7, Ch. 283, L. 1959.

**47-208. Conduct of other business in same office.** A licensee may conduct the business of making loans under this act within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, unless the commissioner shall find, after a hearing, that the other business is of such nature that such conduct tends to conceal evasion of this act or of the rules and regulations made hereunder and shall order such licensee in writing to desist from such conduct.

**History:** En. Sec. 8, Ch. 283, L. 1959.

**47-209. License renewal fee—failure to pay—effect—license—when in force.** Every licensee shall, on or before the first day of December, pay to the commissioner the sum of one hundred twenty-five dollars (\$125.00) for each license held as a licensee fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

**History:** En. Sec. 9, Ch. 283, L. 1959.

**47-210. Rates and charges — refunds — past due amounts — excess charges, effect.** (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding one thousand dollars (\$1,000) in amount, charges not in excess of twenty dollars (\$20) per year one hundred dollars (\$100) on that part of the loan not exceeding three hundred dollars (\$300); sixteen dollars (\$16) per year per one hundred dollars (\$100) on that part of the loan exceeding three hundred dollars (\$300) but not exceeding five hundred dollars (\$500), and twelve dollars (\$12) per year per one hundred dollars (\$100) on that part of the loan in excess of five hundred dollars (\$500) but not exceeding one thousand dollars (\$1,000) when the loan is made for a period of one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made.

For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) On loans of ninety dollars (\$90) or less a licensee may charge, in lieu of charges specified in (a) of this section, not in excess of one dollar (\$1) for each five dollars (\$5) of cash or credit advanced to the borrower, up to the amount of ninety dollars (\$90); and a period of at least fifteen (15) days must be allowed for the repayment of each five dollars (\$5) cash or credit advanced, such charges cannot be assessed by any subterfuge or device on any loan over ninety dollars (\$90) or on any balance of ninety dollars (\$90) or less, when the original loan was greater than ninety dollars (\$90).

(c) Refund. When any loan contract is paid in full by cash, a new loan, renewal or otherwise, one month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: The amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(d) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be five per cent (5%) of the amount past due and said amount may be charged once and no more.

(e) Recording fees. The licensee may collect from the borrower the actual fees paid a public official, or agency of the state, for filing, recording or releasing any instrument securing the loan.

(f) No further charges, no splitting contracts; certain contracts void. No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this act. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this act. All balances due to a licensee from any person, as a borrower, or as an endorser, guarantor or surety for any borrower or otherwise, or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. If any amount in excess of the charges permitted by this act is charged, contracted for, or received, except as the result of an accidental and bona fide error of computation, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, charges or recompense whatsoever.

**History:** En. Sec. 10, Ch. 283, L. 1959.

**47-211. Installment payment—contract period.** No licensee shall enter into any contract of loan of three hundred dollars (\$300) or less, exclusive of charges, under this act which the borrower agrees to make any scheduled repayment of principal more than twenty-one (21) calendar months

from the date of making such contract, nor any contract or loan for more than three hundred dollars (\$300) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than twenty-five (25) calendar months from the date of making. Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five (45) days of the date of the loan and the charges for the number of days in excess of thirty (30) from the date of making may be added to the scheduled amount of said installment.

**History:** En. Sec. 11, Ch. 283, L. 1959.

**47-212. Copy of contract or statement of contents—receipts—return of note.** (a) Borrower to receive copy of contract; or statement of contents. At the time the loan is made, there will be delivered to the borrower, or if there be two (2) or more borrowers, to one (1) of them a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

(1) The name and address of the lender and of one of the borrowers or a maker of the loan;

(2) The date of the loan contract;

(3) The schedule of installments or description thereof;

(4) The principal amount of the loan excluding charges;

(5) The rate or amount of charges as the contract may provide;

(6) The amount collected or paid out for each kind of insurance, if any;

(7) The amount collected or paid out for filing and other fees as allowed in section 10 (e) [47-210(e)] hereof;

(8) The collateral or security for the loan including all other accommodation or other joint makers (co-makers);

(9) That the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours, and in case the charges have been added to the principal of the loan that such charges are subject to the refund requirements of section 10 (c) [47-210(c)] if such loan is prepaid in full.

(b) Receipts; return of note. Every licensee shall:

(1) Give to the borrower a plain and complete receipt in a form approved by the commissioner for every payment made on account of any loan at the time such payment is made.

(2) Endorse indelibly on a loan ledger or card which shall be kept by the licensee, the amount and date of each payment made by the borrower of the loan.

(3) Upon repayment of the loan in full, the licensee shall mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given



to the licensee, within ten (10) days after such repayment. Such canceled notes and canceled assignments shall be mailed to the borrower at his last known address unless returned to the borrower in person.

**History:** En. Sec. 12, Ch. 283, L. 1959.

**47-213. Confessions of judgment—incomplete instruments forbidden.** No licensee shall (1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor (2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed charges; and in which blanks are left to be filled in after execution, however, such details need not appear on a certificate of title to a motor vehicle, a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located, or customary powers in connection with bonds or stocks which may be pledged as collateral; nor (3) take any instrument in which blanks are left to be filled in after the loan is made.

**History:** En. Sec. 13, Ch. 283, L. 1959.

**47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.** (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan where the principal amount thereof is three hundred dollars (\$300) or less, and such amount of three hundred dollars (\$300) shall not include any charge for interest, insurance or any other identifiable charge.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure tangible personal property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

A licensee shall not require insurance under this subsection until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

**History:** En. Sec. 14, Ch. 283, L. 1959.



**47-215. Investigations, when—who may be investigated.** The commissioner or his duly authorized representatives may at any time investigate any transaction with borrowers and may examine the books, accounts and records in this state to discover violations of this act by (1) any licensee, (2) any person who advertises for, solicits or holds himself as willing to make loans in amounts of one thousand dollars (\$1,000) or less, or (3) any person whom the commissioner has reason to believe is violating or is about to violate the provisions of this act.

**History:** En. Sec. 15, Ch. 283, L. 1959.

**47-216. Annual examinations—cost of examinations—limitations.** The commissioner shall make an annual examination of the books, accounts and records of every licensee insofar as they relate to transactions with borrowers under this act and may make such additional examinations as the commissioner deems necessary. The expenses of the commissioner incurred in the examination of the books and records of the licensees, shall be charged at the rate of sixty dollars (\$60) per man days required to examine the books and records of the respective licensees. Each licensee shall be billed by the commissioner for the amount so charged to such licensee. If said charge is not paid within thirty (30) days after the mailing of such bill, the license of said licensee may be suspended or revoked.

**History:** En. Sec. 16, Ch. 283, L. 1959.

**47-217. Records—time kept.** Each licensee shall keep in each licensed office such books, accounts and records as the commissioner shall require and as are necessary to enable the commissioner to determine whether the licensee is complying with this act and with the rules and regulations promulgated thereunder. The licensee shall preserve such records for at least two (2) years after making the final entry on any loan recorded thereon.

**History:** En. Sec. 17, Ch. 283, L. 1959.

**47-218. Annual report—contents—verified—publication.** Each licensee shall annually on or before the 15th day of April, file an annual report for the preceding calendar year with the commissioner. Such report shall give information with respect to the financial condition of such licensee and shall include: The name and address of the licensee; balance sheets at the beginning and end of the calendar year; a statement of income and expenses; a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used in the consumer loan business; an analysis of charges, size of loans made and types of security on loans; an analysis of suits and foreclosures; and such other relevant information as the commissioner may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and be in form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

**History:** En. Sec. 18, Ch. 283, L. 1959.

**47-219. Advertising—limitations.** No person shall advertise, display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcasted or televised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of loans.

**History:** En. Sec. 19, Ch. 283, L. 1959.

**47-220. Wage assignments — limitations.** The payment in money, credit, goods or things in action, as consideration for any sale or assignment of, or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall for the purpose of regulation under this act, be deemed a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid, shall, for the purposes of regulation under this act, be deemed interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by and be subject to the provisions of this act.

Any assignment or other transfer to a licensee or for the benefit of a licensee, of salary, wages, commissions or other compensation for services, must be limited to not exceeding ten per cent (10%) of such salary, wages, commissions or other compensation owing [owing] at the time of the notice to the debtor's employer, hereinafter provided, and thereafter to become owing. Provided, however, no such assignment or order shall be valid unless it is in writing, signed in person by the borrower, or if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been and are living separate and apart when such assignment or order is made. Such notice shall be given only if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security. Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent and must include:

- (a) A correct copy of the assignment.
- (b) A statement of the amount of such loan and the amount due and unpaid thereon.
- (c) A copy of this section. The acceptance and honoring of any assignment shall be at the option of the employer.

**History:** En. Sec. 20, Ch. 283, L. 1959.

**47-221. Surrender of license—surrender shall not affect liability for acts.** Any licensee may surrender any license by delivering it to the commissioner with written notice thereon but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

**History:** En. Sec. 21, Ch. 283, L. 1959.

**47-222. Pre-existing lawful contract not affected, when.** No revocation, surrender or expiration of any license shall impair or affect the obligation, of any pre-existing lawful contract.

**History:** En. Sec. 22, Ch. 283, L. 1959.

**47-223. Revocation and suspension of license, when.** The commissioner, upon ten (10) days written notice to the licensee and statement of the grounds therefor and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend, but not for more than thirty (30) days, or revoke any license issued hereunder if he finds the licensee has knowingly violated any provision of this act. Whenever the commissioner shall enter an order revoking or suspending a license, he shall mail a copy of his order by registered mail to the licensee at the address for which the license was issued.

**History:** En. Sec. 23, Ch. 283, L. 1959.

**47-224. Reinstatement, when.** The commissioner may reinstate any suspended or revoked license if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue such license. In any case where the license has been revoked for cause no application shall be made for issuance of a new license or the reinstatement of a revoked license for a period of six (6) months from the date of revocation.

**History:** En. Sec. 24, Ch. 283, L. 1959.

**47-225. Appeals, procedure.** Any person, licensee, or applicant, considering himself aggrieved by an order of the commissioner, may within thirty (30) days from the entry of the order complained of, take an appeal to the district court of the county in which the licensed premises affected by such order or the premises sought to be licensed are located, by filing a notice of appeal with the clerk of the district court of the proper county.

Appeals may be taken from the district to the supreme court by the party appealing or by the commissioner as in civil cases except that the commissioner shall not be required to give a bond on appeal.

**History:** En. Sec. 25, Ch. 283, L. 1959.

**47-226. Access to records—witnesses.** For the purpose of this section the commissioner or his duly authorized representatives shall have and be given free access to the offices and places of business, files, safes, and vaults, of all such persons, and shall have authority to require the attendance of any person and to examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation or hearing and shall have authority to require the production of books, accounts, papers and records. In the event of disobedience to any subpoena or other process issued by the commissioner or failure to produce any books, accounts, papers and records, the commissioner may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers and records.

**History:** En. Sec. 26, Ch. 283, L. 1959.

**47-227. Cease and desist orders — injunctions — receivers.** Whenever the commissioner has reasonable cause to believe that any person is violating or is threatening to violate any provision of this act, the commissioner, may, in addition to all actions provided for in this act and without



prejudice thereto, enter an order requiring such person to desist or to refrain from such violation; and an action may be brought on the relation of the attorney general and the commissioner to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this act through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by court.

**History:** En. Sec. 27, Ch. 283, L. 1959.

**47-228. Penalties.** (a) Any person who shall contract for, or receive interest or charges on any bond, bill, promissory note or other instrument of writing, at a rate exceeding the maximum amount authorized by this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or both.

(b) Any person, who by any device, subterfuge or pretense whatsoever, shall engage in any transaction permitted only to licensees, under the provisions of the act, without first having obtained a license as herein required shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or both.

**History:** En. Sec. 28, Ch. 283, L. 1959.

#### **Constitutionality**

Section 29 of Ch. 283, Laws 1959 read "Constitutionality. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional it shall be conclusively presumed that the legislature would have enacted the re-

mainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section."

#### **Repealing Clause**

Section 30 of Ch. 283, Laws 1959 repealed all acts and parts of acts in conflict therewith.



## TITLE 48—MARRIAGE

Chapter 1. Marriage defined—how and by whom contracted and authenticated,  
48-130 to 48-132, 48-134.

### CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

Section 48-130. Declaration of marriage without solemnization—how made.  
48-130.1. Persons who may draw up declaration of marriage.  
48-130.2. Penalty for violation of act.  
48-131. Proof of solemnized marriage when no record—how made.  
48-132. Declaration to be acknowledged and recorded.  
48-134. Proof of age—premarital test certificate required of applicants for marriage license.

#### 48-101. (5695) What constitutes marriage.

##### Common Law Marriage

Where the evidence shows that the parties kept the alleged relationship of husband and wife secret at their home, among the people of the community, and with regards to relatives, and only held themselves out as husband and wife in

hotels, motels, and other living places distant from their residence, they did not establish the reputation of being husband and wife which is necessary for a common law marriage. *Miller v. Sutherland*, 131 M 175, 309 P 2d 322.

#### 48-103. (5697) Marriage—how manifested and proved.

##### References

Cited or applied in *Miller v. Sutherland*, 131 M 175, 309 P 2d 322, 326.

48-130. (5724) Declaration of marriage without solemnization—how made. Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in section 48-116 must prior to executing the declaration, secure the premarital test certificate required by section 48-134, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. Any such declaration of marriage shall substantially contain the following:

1. The names, ages, and residences of the parties;
2. The fact of marriage;
3. Name of father, maiden name of mother, of both parties, and address of each;
4. That both parties are legally competent to enter into the marriage contract.

Such declaration must be subscribed by the parties and attested by at least two (2) witnesses, and formally acknowledged before the clerk of the district court of said county. Unless all the provisions of this act shall be complied with the marriage shall be deemed invalid.

**History:** En. Sec. 85, Civ. C. 1895;  
re-en. Sec. 3631, Rev. C. 1907; re-en. Sec.  
5724, R. C. M. 1921; amd. Sec. 1, Ch. 275,  
L. 1959. Cal. Civ. C. Sec. 75.

##### Amendment

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

48-130.1. Persons who may draw up declaration of marriage. It shall be unlawful for any person, other than the parties to such written declara-

tion, to draw any such declaration of marriage unless he shall have been duly licensed to practice law in the state of Montana.

**History:** En. Sec. 2, Ch. 275, L. 1959.

**48-130.2. Penalty for violation of act.** Any person violating the provisions of this act, upon conviction shall be subject to a fine of not less than three hundred dollars (\$300.00) or six (6) months in a county jail, or both.

**History:** En. Sec. 3, Ch. 275, L. 1959.

#### **Repealing Clause**

Section 4 of Ch. 275, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 5 of Ch. 275, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 17, 1959.

**48-131. (5725) Proof of solemnized marriage when no record—how made.** If the record of the solemnization of a marriage heretofore entered into has been lost or destroyed, and not known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages and residences of the parties;
2. The date, and place of marriage and other pertinent facts of the marriage;
3. That the record of the solemnized marriage has become lost or destroyed, as the case may be, and is not known to exist.

**History:** En. Sec. 86, Civ. C. 1895; re-en. Sec. 3632, Rev. C. 1907; re-en. Sec. 5725, R. C. M. 1921; amd. Sec. 1, Ch. 276, L. 1959. Cal. Civ. C. Sec. 76.

#### **Amendment**

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

**48-132. (5726) Declaration to be acknowledged and recorded.** The written declaration of marriage, provided for in section 48-131, shall be attested by at least two (2) witnesses and formally acknowledged by an official authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district court in the county of the residence of the parties shall serve as an official record of the marriage of the parties.

**History:** En. Sec. 87, Civ. C. 1895; re-en. Sec. 3633, Rev. C. 1907; re-en. Sec. 5726, R. C. M. 1921; amd. Sec. 2, Ch. 276, L. 1959. Cal. Civ. C. Sec. 77.

#### **Repealing Clause**

Section 3 of Ch. 276, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1959 amendment completely rewrote this section. Formerly it required the declaration to be acknowledged and recorded in a like manner as marriage certificates.

#### **Effective Date**

Section 4 of Ch. 276, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 17, 1959.

**48-134. Proof of age—premarital test certificate required of applicants for marriage license.** Before any person, who is or may hereafter be authorized by law to issue marriage licenses, shall issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age, and, if such applicant is a minor, the consent required by section 48-118, Revised Codes of Montana, 1947, and shall also file with him a certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States

territory, or any other person authorized by laws of Montana to make such a certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than twenty (20) days prior to the date of issuance of such license, and that the report of the results of such serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to said proposed contract.

Any person who by law is validly able to obtain a marriage license in the state of Montana is also validly able to give his or her consent to any examinations and tests required by this act. In submitting the blood specimen to the laboratory, the physician, or any other person authorized by the laws of Montana to make such a certificate, shall designate that it is a premarital test.

**History:** En. Sec. 1, Ch. 208, L. 1947;  
amd. Sec. 1, Ch. 21, L. 1959.

by section 48-118, Revised Codes of Montana, 1947, and shall also."

#### **Amendment**

The 1959 amendment inserted the words "exhibit to him a birth certificate or other satisfactory evidence of age, and, if such applicant is a minor, the consent required

#### **Repealing Clause**

Section 2 of Ch. 21, Laws of 1959 repealed all acts and parts of acts in conflict therewith.

## TITLE 49—MAXIMS OF JURISPRUDENCE

### CHAPTER 1—MAXIMS OF JURISPRUDENCE

**49-102.** (8739) When the reason of a rule ceases, so should the rule itself.

#### References

Cited or applied in State ex rel. Mit-

chell v. District Court, 128 M 325, 275 P 2d 642, 647.

**49-104.** (8741) One must not change his purpose to the injury of another.

#### References

Cited in Bradbury v. Nagelhus, 132 M 417, 319 P 2d 503, 511.

**49-105.** (8742) Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

#### Venue Established by Contract

Defendant in action to recover monthly rental for electric signs was not entitled to change of venue where stipulation in contract established venue of any future suit or action instituted for enforcement of contract. Electrical Products Con-

solidated v. Bodell, 132 M 243, 316 P 2d 788, 789.

#### References

Cited or applied in New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012, 1017.

**49-107.** (8744) He who consents to an act is not wronged by it.

#### Operation and Effect

Even though a wife did not know the attorney whom she authorized to represent her in a divorce suit, in the absence

of charges of misconduct against the attorney, she was not justified in attacking the divorce decree. Deich v. Deich, — M —, 323 P 2d 35, 46.

**49-108.** (8745) Acquiescence in error takes away the right of objecting to it.

#### Operation and Effect

A purchaser who, at the time of the delivery of the deed, knew of the mistake and who paid the balance of the purchase price acquiesced in the mistake and could not urge the mistake as a ground

for reformation. Schillinger v. Huber, 133 M 80, 320 P 2d 346, 349.

#### References

Cited or applied in Deich v. Deich, — M —, 323 P 2d 35, 46.

**49-109.** (8746) No one can take advantage of his own wrong.

#### Operation and Effect

Where an oil and gas lessee was ready, able and willing to drill further wells and develop the lessor's property, an attack upon the lessee's title by lessors will relieve the lessee of the duty either to proceed with the drilling operations or the payment of the delay rentals specified

during the contest of his title. Fey v. A. A. Oil Corporation, 129 M 300, 285 P 2d 578, 587.

#### References

Cited or applied in Hansen v. Hansen, 130 M 175, 297 P 2d 879, 883; Deich v. Deich, — M —, 323 P 2d 35, 46.

**49-111.** (8748) He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

#### References

Cited or applied in Deich v. Deich, — M —, 323 P 2d 35, 46.



**49-114.** (8751) One who grants a thing is presumed to grant also whatever is essential to its use.

**References**

Cited or applied in *Yegen v. Cardwell*,  
133 M 236, 321 P 2d 1077, 1079.

**49-119.** (8756) The law helps the vigilant, before those who sleep on their rights.

**References**

Cited in *Barrett v. Zenisek*, 132 M 229,  
315 P 2d 1001, 1007.

**49-121.** (8758) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

**References**

Cited or applied in *Shook v. Woodard*,  
129 M 519, 290 P 2d 750, 754; *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 509.

**49-123.** (8760) The law never requires impossibilities.

**References**

Cited or applied in *Davis v. Burton*, 128  
M 434, 278 P 2d 213, 218.

**49-124.** (8761) The law neither does nor requires idle acts.

**References**

Cited or applied in *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 647; *Davis v. Burton*, 128 M 434, 278 P 2d 213, 218; *State ex rel. Roeder v. State Board of Equalization*, 133 M 393, 324 P 2d 1057, 1059; *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679, 691.

**49-125.** (8762) The law disregards trifles.

**References**

Cited or applied in *Davis v. Burton*, 128  
M 434, 278 P 2d 213, 218.

**49-131.** (8768) Time does not confirm a void act.

**References**

Cited or applied in *Carlson v. Flathead County*, 130 M 36, 293 P 2d 279, 284.

**49-133.** (8770) An interpretation which gives effect is preferred to one which makes void.

**References**

Cited or applied in *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 647.

**49-134.** (8771) Interpretation must be reasonable.

**References**

Cited or applied in *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 647.

## TITLE 50—MINES AND MINING

Chapter 4. Regulation of coal mining industry—coal mining code, 50-474, 50-475.

5. Regulation of coal mining industry—coal mining code continued, 50-501.

### CHAPTER 4—REGULATION OF COAL MINING INDUSTRY— COAL MINING CODE

Section 50-474. Control of roof, face, and ribs in coal mines.

50-475. Violation of act—penalty.

#### 50-466. (3509) Repealed.

##### Repeal

This section (Sec. 67, Ch. 120, L. 1911; timbering of the roofs, was repealed by  
Sec. 20, Ch. 185, L. 1949), relating to the Sec. 4, Ch. 188, Laws 1959.

**50-474. Control of roof, face, and ribs in coal mines.** 1. The management of each mine shall adopt and comply with adequate minimum systematic standards for roof support suitable to the roof conditions of the mine or sections thereof. Such standards may require the use of conventional supports (timbers, jacks, cross bars, etc.), or may, as hereinafter provided, require the use of roof bolts in conjunction with conventional supports. Such standards shall be described in writing and illustrated by drawings, copies of which shall be posted at one or more conspicuous places at the mine. Such standards shall require that additional roof support be added wherever necessary to afford adequate protection.

2. Minimum systematic standards for roof supports in mines or sections thereof where conventional supports are to be used as the sole means of support shall be approved, in writing, by the state coal mine inspector before they are made effective.

3. A. Minimum systematic standards for roof supports for mines or sections thereof where roof bolts are to be used in conjunction with conventional supports shall be approved, in writing, by the state coal mine inspector before they are made effective. Provided further, that the state inspector shall not approve any such proposed standards unless and until they are in compliance with the recommendations of an authorized representative of the United States bureau of mines. Roof bolts shall not be used as the sole means of support in any mine or section thereof.

B. Before roof bolting is adopted in conjunction with conventional timbering as a means of support, the effectiveness of roof bolts shall be proved by experimental installations in rooms or back entries where there is likely to be little travel. Such installations shall be made in accordance with the recommendations of an authorized representative of the United States bureau of mines, and their effectiveness shall be observed for a period of not less than two months. The minimum systematic support standards shall be determined on the basis of such observations.

C. Minimum systematic support standards for mines or sections thereof where roof bolts are used in conjunction with conventional roof supports shall show:

- (I) Type of bolts to be used.
- (II) Dimensions of bolts.
- (III) Spacing of bolts.
- (IV) Maximum width of places where bolts are to be installed.
- (V) Maximum distance from face bolts are to be installed.
- (VI) Type and size of bearing plates.
- (VII) Safety precautions to be taken.
- (VIII) Timbers to be set in connection with bolting.
- (IX) Area of mine involved.

D. No change shall be made in any support standards concerning roof bolts until and unless a written permit granting such change has been issued by the state coal mine inspector, and further that such change is in compliance with the recommendations of an authorized representative of the United States bureau of mines.

E. Roof-bolt testing shall be done by qualified persons designated by the mine foreman.

F. Any violation by mine management of the provisions of subsections 3A, 3B, 3C, 3D, and 3E shall automatically void the permit for using roof bolts in conjunction with conventional timbers.

4. The management shall provide at or near the face workings an ample supply of suitable materials of proper size with which to secure all working places in a safe manner.

5. Safety parts, jacks, or cross bars shall be set close to the face when necessary, before other mining operations are begun, and as needed thereafter.

6. All underground working places, active roadways and travelways shall be adequately supported to protect employees from falls of roof, face or ribs. Loose roof and overhanging or loose faces and ribs shall be taken down or adequately supported.

7. Roof shall be adequately supported to protect employees where roof material is being taken down, cross bars are being installed, roof-bolt holes are being drilled, and when roof bolts are being installed.

8. Supports knocked out accidentally shall be replaced promptly.

9. Permanent supports in active workings shall not be removed unless and until equivalent protection is provided.

10. Where roof supports are required at the working faces, persons shall not advance beyond artificially supported roof, except those who are assigned to install supports or inspect the place.

11. The management shall instruct, or have instructed all underground employees in the proper testing of roof, face, and ribs.

12. To detect dangerous conditions, during the work on any shift, the mine foreman in charge or his designated assistants shall examine or cause to be examined by a competent person, roof, face, and ribs or working places, and passageways where men travel. Where found, such dangerous conditions shall be corrected promptly by removing loose roof or rib, by adding adequate roof support, or by duplicating defective supports where necessary.

13. Wherever conventional timbers are used, they shall be set to conform to the clearance provisions hereinafter provided.

14. Where there is danger of face coal rolling on a person during or after undercutting or center cutting, it shall be spragged by placing blocks in the cut or by blocking with leaning posts.

15. A bar of proper length shall be used to bar down loose material.

16. In worked-out places where timbers are being removed, persons engaged in drawing timber shall not be permitted to work alone.

17. A. Each employee shall examine his working place upon entering the same and shall not commence to mine or load until it is made safe. He shall be very careful to keep his working place in a safe condition at all times.

B. When draw slate is over the coal, the miner shall not go underneath the draw slate until it is made safe from falling by securely posting it, and he shall not remove the posts until the coal is removed and he is ready to take down the draw slate. He shall not place in the gob or refuse pile any fine coal or coal dust but shall load same into cars.

C. Should he at any time find his place becoming dangerous from any cause or condition, to such an extent that he is unable to take care of the same personally, he shall at once cease work and notify the mine foreman or his assistant of such danger, and upon leaving such place he shall place some plain warning at the entrance thereof to warn others from entering into the said danger, and he shall not return to his place until ordered to do so by the mine foreman or his assistant. Each miner shall obey any order or orders given by the superintendent or mine foreman relating to the width of his working place or safety of the same. Such miner or other person shall not be held to have violated the provisions of this section, if the owner, lessee, agent, superintendent, or mine foreman fail to supply the necessary props, caps, timber, or necessary material as provided in this act.

D. Each miner or other person shall avoid waste of props, caps, timber, or other material. When he has props, caps, timber, or other material unsuited for his purpose, he shall not cover them up or destroy them, but shall place same near the track where they can be readily seen.

**History:** En. Sec. 1, Ch. 188, L. 1959.

#### **Compiler's Note**

Section 2 of Ch. 188, Laws 1959 amended section 50-501.

#### **Title of Act**

An act to provide conventional and roof bolting standards for coal mining operations; prescribing procedure for adoption and use of roof support standards; specifying minimum standards of roof control and providing safety provisions; amending

section 50-501, Revised Codes of Montana, 1947, pertaining to mine foremen and their duties by striking the words "timbering" and "timbers" and requiring compliance with the roof standards of this act; providing a penalty for the violation of this act; repealing section 50-466, Revised Codes of Montana, 1947, as amended by chapter 185, Laws of 1949, and section 50-510, Revised Codes of Montana, 1947, and all other acts in conflict herewith; providing a severability clause.

**50-475. Violation of act—penalty.** Any violation of this act shall be punishable under section 50-529, Revised Codes of Montana, 1947.

**History:** En. Sec. 3, Ch. 188, L. 1959.

#### **Repealing Clause**

Section 4 of Ch. 188, Laws 1959 read "That section 50-466, Revised Codes of Montana, 1947, as amended by chapter 185, Laws of 1949 and section 50-510, Re-

#### **Compiler's Note**

This act is compiled as 50-474, 50-501, and 50-475 respectively.



vised Codes of Montana, 1947, and all other acts in conflict herewith be repealed."

#### Separability Clause

Section 5 of Ch. 188, Laws 1959 read

"If any section, subsection, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portion of this act."

### CHAPTER 5—REGULATION OF COAL MINING INDUSTRY— COAL MINING CODE CONTINUED

Section 50-501. Mine foreman and his duties.

**50-501. (3515) Mine foreman and his duties.** In order to secure efficiency in the coal mines, the operator or superintendent shall employ a competent and practical foreman; said mine foreman shall have passed an examination and obtained a certificate of competency as required by this act, and said mine foreman shall devote the whole of his time to his duties at the mine when in operation.

Provisions of these sections requiring a state certified foreman may be waived by the state coal mine inspector in mines where five men or less are employed on any one shift; provided, however, that the state inspector considers the person in charge of the underground work has adequate ability to supervise the safety of the workers and to carry out the duties imposed by law in the mine concerned.

The mine foreman or his assistant shall visit and examine every working place in the mine at least once each day, or more often if necessary, while the miners of such places are or should be at work, and shall examine and see that each working place is secured by the standards of section 1 [50-474] of this act so that the safety of the mine is assured; he shall see that a sufficient supply of roof support material is always on hand at the working places in compliance with this act.

When the mine foreman is personally unable to carry out the requirements of this act as pertaining to his duties, on account of sickness or of other unavoidable conditions, a competent person shall be appointed to act in his place. The said person so appointed shall possess a mine foreman's certificate of competency.

Whenever such mine foreman, his assistant or assistants, shall have an unsafe place reported to him or them, he or they shall order and direct that the same be placed in a safe condition, and until such is done no person or persons shall enter such unsafe place except for the purpose of making it safe.

**History:** En. Sec. 73, Ch. 120, L. 1911; re-en. Sec. 3515, R. C. M. 1921; amd. Sec. 22, Ch. 185, L. 1949; amd. Sec. 2, Ch. 188, L. 1959.

#### Amendment

The 1959 amendment, in the third paragraph, substituted "the standards of section 1 of this act" for "timbering" and, in the final clause of the third paragraph, substituted "roof support material" for "timbers and material."

#### Compiler's Note

The reference in the third paragraph to "section 1 of this act" is to the amendatory act, Ch. 188, Laws 1959, section 1 of which is compiled as 50-474.

### 50-510. (3525) Repealed.

#### Repeal

This section (Sec. 83, Ch. 120, L. 1911; Sec. 14, Ch. 38, L. 1945), relating to the

care of working places to be taken by miners, was repealed by Sec. 4, Ch. 188, Laws 1959.

CHAPTER 7—LOCATION AND RECORD OF MINING  
AND MILLSITE CLAIMS

50-702. (7366) Record of certificate of location.

Location Notices

In action to quiet title to mining claims, location notices of defendants were void where they were so indefinite and uncer-

tain that it would be very difficult or perhaps impossible, to locate the corners of the claims. Robinson v. Laffoon, 131 M 446, 311 P 2d 768, 771.

50-713. (7377) Defective locations good against persons with notice.

Application of Section

In action to quiet title it appeared that defendants were aware of the claims of plaintiffs and were watching to ascertain whether plaintiffs performed their assessment work. Plaintiffs had been interested in their claims for 21 years and they were originally located in 1930. One of the de-

fendants had been familiar with the area of the claims since 1932. Defendants in such circumstances could not maintain that they located their claims without notice of the prior claims of plaintiffs. Robinson v. Laffoon, 131 M 446, 311 P 2d 768, 772.

## TITLE 52—MORTGAGES

### CHAPTER 2—MORTGAGES OF REAL PROPERTY

#### 52-212. (8273) Recordation of mortgages, deeds of trust, etc.

##### Collateral References

Priority as between artisan's lien and chattel mortgage, as affected by statutory

provision for recording mortgage. 36 ALR 2d 240.

### CHAPTER 3—MORTGAGES OF PERSONAL PROPERTY

#### 52-301. (8275) Chattel mortgages—interest which may be mortgaged, etc.

##### Operation and Effect

A chattel mortgage, which by its terms was to be security for future advances also, was security for future loans so that attachment will not lie in an action based on the default of the later loan, since the debt was secured. The chattel mortgage

was plain and unambiguous and needed no construction so that parol evidence which tended to vary or alter the terms of the written mortgage was required to be disregarded. First Nat. Bank of Plains v. Green Mt. Soil Conservation District, 130 M 1, 293 P 2d 289.

#### 52-313. (8287) Sales—commencement and postponement.

##### Collateral References

Effect of purchase of property by

pledgee on foreclosure of mortgage held as collateral security. 37 ALR 2d 1397.

#### 52-319. (3308.1) Notices of chattel mortgages on livestock, renewals, etc.

##### Application of Statute

Compliance with state recording statutes was immaterial where federal common law was controlling on the question of whether there was a conversion of

property subject to a chattel mortgage in favor of the United States securing an F H A loan, sold through the agency of a livestock company. United States v. Sig Ellingson & Co., 164 F Supp 7.

## TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-106 to 53-108, 53-114, 53-116, 53-118, 53-119.1 to 53-122, 53-129.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-419, 53-422, 53-423, 53-434, 53-448.
6. Additional fees or taxes on motor vehicles, 53-615 to 53-619, 53-623 to 53-625, 53-628, 53-639 to 53-643.

### CHAPTER 1—REGISTRATION OF MOTOR VEHICLES—DUTIES OF REGISTRAR

- Section 53-101. Duties of registrar of motor vehicles—records.
- 53-106. Number plates.
- 53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.
- 53-106.2. Amateur radio operators—special license plate.
- 53-106.3. Issuance—application—additional fee.
- 53-106.4. Rules and regulations—limit of one identical pair of plates for each operator.
- 53-106.5. List of radio operators' special plates—distribution to public officials.
- 53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license.
- 53-107. Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand.
- 53-108. Renewal of registration.
- 53-114. Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.
- 53-116. Issuance of receipt and assignment of number plates.
- 53-118. Application for dealer's license.
- 53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.
- 53-119.2. Fees credited to general road fund.
- 53-120. Replacing number plates.
- 53-121. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden.
- 53-122. Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors—providing for transfer of funds from the motor vehicle fund of the registrar of motor vehicles to the motor vehicle recording fund (sometimes called the motor vehicle administrative fund)—providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in said motor vehicle recording fund for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles.
- 53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.

#### 53-101. (1755) Duties of registrar of motor vehicles — records.

1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, of motor and accessories dealers and of operators and chauffeurs, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, of all dealers in motor vehicles and automobile accessories and of operators and chauffeurs.



2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

- (a) Under distinctive license number assigned to vehicle by the county treasurers.
- (b) Alphabetically under name of owners.
- (c) Numerically under make and identifying number of vehicle.
- (d) Such other index of registration as registrar shall deem expedient.

4. In the case of dealers the records shall show the name of the applicant, his residence and address by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him.

5. The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars (\$25,000.00), providing for the faithful performance of his duty. He shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many of the clerical help from the inmates of the state prison as the registrar determines to be possible. The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees.

6. All office equipment, books, files and records belonging to the motor department shall be in the care and general custody and control of the registrar of motor vehicles at the state penitentiary. In order to prevent an accumulation of records and files which shall have ceased to be of any value the registrar of motor vehicles shall have the authority and it shall be his duty to destroy all correspondence, motor card and application card records after the expiration of five (5) years from the date thereof, and all conditional sales contracts and chattel mortgages and records pertaining thereto after the expiration of five (5) years after the date the same have ceased to be liens on the motor vehicles described therein.

7. The registrar may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, sheriffs, and to chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station.

8. All such records shall be open to inspection during all reasonable business hours and the registrar of motor vehicles shall furnish any in-

formation from said records upon payment by the applicant of the cost of transcribing the information requested.

**History:** En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755, R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957.

#### Amendment

The 1957 amendment in subd. 2 substituted "identifying number" for "manufacturer's engine and serial number"; in subd. 3 (c) substituted "identifying number" for "motor number"; in subd. 4 substituted "records" for "record"; in subd. 5 substituted the present second and third sentences for ones which read "He may appoint one deputy at a salary not to exceed thirty-three hundred dollars (\$3,300.00) per year, and such number of civilian clerks, and for such time or times, at a salary of not to exceed one hundred and seventy-five dollars (\$175.00) per month each, as may be authorized by the state

board of examiners, the salary of which deputy and the salaries of which clerks shall be fixed by such board of examiners. The remaining clerical help shall be selected by the registrar of motor vehicles from among the inmates of the state prison" and substituted subd. 7 for one which formerly read "7. The registrar of motor vehicles shall, at the end of each month, prepare lists of certificates of registration and ownership issued for the current month, showing the number and kind of license issued, the name and address of owner and legal owner, the make of car and engine number. Such list shall be distributed to the sheriffs and treasurers of each county of the state and to chiefs of police of each incorporated city of the state by the registrar of motor vehicles."

#### Repealing Clause

Section 2 of Ch. 208, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**53-106. (1757) Number plates.** (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle by the registrar of motor vehicles. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type, one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be renewed annually, shall bear a distinctive marking each year, and shall be furnished by the state.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be

serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be renewed by the registrar of motor vehicles at such time when the physical condition of numbered plates requires same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers.

Number plates assigned to any motor vehicle shall be used only on the specific motor vehicle to which originally assigned.

(5) For the purpose of this act, the several counties of the state shall



be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

**History:** En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959.

#### Amendments

The 1955 amendment in subd. (1) substituted the present second sentence for one which read "Such number plate shall be in six series; one series for owners of motor cars, one for owners of motor vehicles, of the motorcycle type, one for dealers in each of the two types of vehicles above named, one for trailers and one for trucks"; in the first sentence of subd. (2) substituted "six inches wide and twelve inches in length" for "at least five inches wide and not less than thirteen inches in length," in the second sentence in the first provided clause substituted "he" for "the registrar of motor vehicles" "and" for "then" between the words "plates" and "such" "the registrar" for "he" before the words "shall determine" in the provided further clause substituted

"registrar" for "registrar of motor vehicles" and in the last sentence of subd. (2) substituted the words "letters 'D,' 'UD,' or 'DTR,' such letters" for "letter 'D,' such letter."

The 1957 amendment made numerous changes in this section. For section prior to amendment see 1955 amendment note and parent volume.

The 1959 amendment in subd. (3) inserted the words "and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such."

#### Separability Clause

Section 2 of Ch. 236, Laws 1957 read "If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

#### Repealing Clauses

Section 3 of Ch. 236, Laws 1957 and Sec. 2 of Ch. 245, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.** Any owner of a motor vehicle manufactured more than thirty (30) years prior to the date of the application referred to hereunder, solely as a collectors' item and not for general transportation purposes may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty



(2850) pounds or less shall be five dollars (\$5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars (\$10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, Revised Codes of Montana, 1947, and shall deliver to the applicant two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number, but the year of issuance shall not be shown thereon. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

**History:** Section 53-106.1 added by Sec. 1, Ch. 123, L. 1955.

#### Title of Act

An act to amend chapter 1, Title 53, Revised Codes of Montana, 1947, by adding a new section 53-106.1 to provide for

the registration of motor vehicles owned and operated solely as collectors' items; providing the fees to be paid for such registration; and providing for the issuance of license plates for such motor vehicles.

**53-106.2. Amateur radio operators—special license plate.** Any motor vehicle owner and resident of this state, who holds an unrevoked and unexpired official amateur radio station license and operator's license, "conditional" or higher class, issued by the federal communications commission of the United States, shall upon written application on form prescribed by the registrar of motor vehicles of the state of Montana, accompanied by proof of ownership of such amateur radio station license and operator's license, be issued lettered license plates in pairs (two identically lettered plates), in addition to the regular license plates prescribed by law. There shall be stamped or impressed upon such special license plates in clear lettering the official amateur radio call letters of such owner as assigned to such owner by said federal communications commission, and said plates so-lettered shall be renewed concurrently with, and at the time of, the issuance of the regular motor vehicle license plates.

**History:** En. Sec. 1, Ch. 2, L. 1957; amd. Sec. 1, Ch. 62, L. 1959.

#### Title of Act

An act authorizing the registrar of motor vehicles of the state of Montana to issue upon proper application a special license plate in addition to regular license plates, as provided for in section 53-108 of the Revised Codes of Montana, 1947, for resident motor vehicle owners who operate amateur radio stations; authorizing issuance of necessary rules and regulations by said registrar; authorizing lists of special license plate holders for law enforcement officers and specifying duties regarding such lists; providing for return of special license plate upon revocation or expiration of amateur radio license; and re-

pealing all acts and parts of acts in conflict herewith.

#### Amendment

The 1959 amendment inserted the words "of the United States" inserted the word "written"; inserted the words "of the state of Montana, accompanied by proof of ownership of such amateur radio station license and operator's license"; substituted "lettered license plates in pairs (two identically lettered plates)"; deleted the words "upon which special license plates in lieu of the numbers" which appeared after the words "in addition to the regular license plates" and substituted the present last sentence for words which appeared at the end of the section which read as follows: "for regular license plates shall be inscribed the official amateur radio

call letters of such applicant as assigned by said federal communications commission and shall be renewed concurrently with regular plates."

**53-106.3. Issuance—application—additional fee.** The registrar of motor vehicles shall issue said lettered license plates to amateur radio operators upon application showing:

(1) Proof that applicant is the owner and holder of such amateur radio station license and operator's license;

(2) Compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles, and upon the payment, or proof of the payment, of the regular license fee for license plates as provided by law; and,

(3) Payment of a five dollar (\$5.00) additional fee.

**History:** En. Sec. 2, Ch. 2, L. 1957; inserted the words "the owner and" in subd. (1); inserted the words "or proof of the payment" in subd. (2), and raised the additional fee from \$1.50 to \$5.00.

**Amendment**

The 1959 amendment substituted "said lettered license plates" for "special license

plates" for "special license plates" and in the last sentence substituted "identical pair of lettered license plates" for "special license plates."

**53-106.4. Rules and regulations—limit of one identical pair of plates for each operator.** The registrar of motor vehicles shall make such rules and regulations as may be necessary to procure compliance with all the laws of the state regulating the issuance of motor vehicle licenses relating to the use and operation of motor vehicles before issuing the lettered license plates. The registrar shall not issue more than one (1) identical pair of lettered license plates for any licensed amateur radio station in any one licensing period.

**History:** En. Sec. 3, Ch. 2, L. 1957; substituted "lettered license plates" for "special license plates" and in the last sentence substituted "identical pair of lettered license plates" for "special license plates."

**Amendment**

The 1959 amendment substituted "let-

**53-106.5. List of radio operators' special plates—distribution to public officials.** The registrar shall, on or before the first day of July of each year, furnish to the supervisor of the state highway patrol, to the director of civil defense, to the sheriff of each county in the state, to the chief of police of each incorporated city in the state, and to other public officials as the registrar shall deem necessary, an alphabetically arranged list of the names, addresses and license plate numbers and letters of each person to whom a special license plate has been issued, and it shall be the duty of the supervisor, sheriffs and chiefs of police to maintain and keep current such lists for public information and inquiry, particularly in relation to public emergencies.

**History:** En. Sec. 4, Ch. 2, L. 1957.

**53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license.** The lettered license plates, as herein provided, are to replace the regular license plates on the motor vehicle owned by said amateur radio licensee for such period of time as the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. Whenever such official amateur radio license is revoked or ex-

pires for whatever reason, such license plate shall be removed immediately by the owner of the motor vehicle and the regular plates again placed or mounted on the motor vehicle as in other cases. When the motor vehicle is sold or otherwise transferred, the regular number plates shall be mounted on the motor vehicle; but the owner and holder of valid official amateur radio station and operator's license shall have the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the registrar. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued shall be returned and surrendered to the registrar of motor vehicles.

**History:** En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959.

#### **Amendment**

The 1959 amendment completely rewrote this section. Prior to amendment this section read as follows: "The special license plate as herein provided is to be placed on the motor vehicle so that the regular plates are not covered by the special plate. When the motor vehicle is sold or otherwise transferred, the usual number plates will be left on the motor vehicle, and the special plate will be retained by the owner of the amateur radio station. This plate may be placed on another motor vehicle providing all requirements of section 2, subsections one (1) and

two (2) above [53-106.3] are met. On the revocation or expiration of the amateur radio station and operator's license the special license plate as issued shall be returned to the registrar of motor vehicles."

#### **Repealing Clauses**

Section 6 of Ch. 2, Laws 1957 and Sec. 5 of Ch. 62, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 6 of Ch. 62, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 27, 1959.

**53-107. (1758) Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand.** Upon completion of the application for registration, in quintuplet, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two (2) copies of the application marked "Owner's Certificate of Registration and Tax Receipt," one (1) of which shall be marked "file copy," and forward one (1) copy of the application to the registrar of motor vehicles who shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of ownership, and said owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. In the event the said certificate of ownership be in the possession or under the control of any person other than the person entitled to operate and possess the motor vehicle the same must be surrendered to the person entitled to operate and possess such motor vehicle, upon demand, and refusal shall constitute a misdemeanor. At the same time, he shall issue to any conditional sales vendor, or other person holding the legal title to the vehicle, or any mortgagee thereof, or other lien holder, a statement of the filing of such conditional sales contract, mortgage or other lien, said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration



number assigned to the owner and the vehicle, (3) the name and complete address of the owner and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

Upon receipt of the application the registrar shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the registrar of motor vehicles.

The reverse side of the certificate of ownership shall contain a form of notice to the registrar of a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.

Owner's certificate of registration receipt to be signed, carried, and exhibited on demand. (a) Every owner, except owners of passenger cars, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the registrar of motor vehicles shall at all times be carried in the vehicle, except passenger cars, to which it refers or shall be carried by the person driving or in control of such vehicle, except passenger cars, who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department. (b) The provisions of this section requiring that a registration receipt be carried in the vehicle to which it refers or by the person driving the same shall not apply when such receipt is used for the purpose of making application for renewal of registration or upon a transfer of registration of said vehicle.

The term "motor vehicle" includes automobile, truck, motorcycle, semitrailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front and thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof, by affidavit, of such stamping is filed with him.

**History:** En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R. C. M. 1921; amd. Sec. 2, Ch. 159, L. 1933; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955.

#### **Amendment**

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

#### **Repealing Clause**

Section 2 of Ch. 200, Laws 1955 repealed all acts and parts of acts in conflict therewith.



**Effective Date** . . . . . should be in effect from and after June  
Section 3 of Ch. 200, provided the act 30, 1955.

**53-108. (1758.1) Renewal of registration.** Every vehicle registration under this act shall expire on December thirty-first of each year and shall be renewed annually upon application and payment of license fees, as provided in sections 53-114, Revised Codes of Montana, 1947, as amended by section 1, chapter 256, Laws of 1955, and 53-112 (53-122), Revised Codes of Montana, 1947, as amended by section 1, chapter 41, Laws of 1955, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until cancelled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually. Upon annual renewal, whenever the legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicle between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

Any purchaser of a motor vehicle from a duly licensed motor vehicle dealer which has not been registered or reregistered for the current year may during the time of (the) certificate of ownership thereto is in the process of being transferred in the office of the registrar of motor vehicles, upon making an affidavit to that effect upon a form prescribed by the registrar of motor vehicles and upon the payment of a fee of one dollar (\$1.00) to be collected by the county treasurer and remitted to the board, obtain from the county treasurer of the county in which said vehicle is subject to tax a temporary windshield sticker of such size, color and design as the board may prescribe, to be validated by the county treasurer for a period of thirty (30) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle and upon displaying the number plates or plate assigned thereto for the previous year (unless the seller has been unable to deliver such previous year's plate or plates) shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however, the county treasurer shall not sell, or no person shall purchase more than one (1) thirty (30) day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous thirty (30) day windshield sticker. Provided, further, however, that any purchaser of a new motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of three (3) days from the date of purchase to make such application for registration and obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser

to operate such new motor vehicle upon the streets and highways of this state without a certificate of registration and registration plates during the said three-day period; providing further that such purchaser must have in his possession a valid bill of sale or other satisfactory evidence of ownership.

**History:** En. subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959.

#### Compiler's Note

The reference in the first paragraph to section 53-112 is an apparent error and should be to 53-122 which is the number in parenthesis.

#### Amendments

The 1955 amendment substituted "registrar of motor vehicles" for "registrar" in the first paragraph; substituted "January fifteenth" for "January first" in the second paragraph and added the last paragraph.

The 1957 amendment substituted "January first" for "January fifteenth" and "February fifteenth" for "February first" in the second paragraph and added the proviso clause in the third paragraph.

### 53-109. (1758.2) Transfer of title or interest.

#### Pledge of Title Certificate

In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, it was a question for the jury whether title certificate

The 1959 amendment in the third paragraph inserted the next to the last sentence, and in the last sentence of that paragraph, inserted the word "further," substituted "application for registration and obtain registration plates" for "affidavit and obtain such sticker" and substituted "a certificate of registration and registration plates" for "number plates or sticker."

#### Repealing Clauses

Section 2 of Ch. 146, Laws 1957 and Sec. 2 of Ch. 100, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 146, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

was first surrendered as evidence of a pledge and then returned as evidence of payment. *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042.

**53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration, or re-registration, upon blank form to be prepared and furnished by the registrar of motor vehicles, executed in quintuplet, which application shall contain:

(a) Name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable.

(b) Name and address of conditional sales vendor, mortgagee or holder of other lien against said motor vehicle, with statement of amount owing under such contract or lien.

(c) Description of motor vehicle, including make, year model, engine and serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) In case of re-registration, the license number for the preceding year.

(e) Such other information as the registrar of motor vehicles may require.

(2) Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) The applicant shall, upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or re-registration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or re-registration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or re-registration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except as hereinafter provided, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be the subject to assessment, levy and taxation more than once in each year, and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise.

(6) The applicant for original registration of any wholly new and unused motor vehicle acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 53-617, Revised Codes of Montana, 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or re-registration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "Taxes on this vehicle due January 1st of current



year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application; and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

**History:** En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957.

#### Compiler's Note

Section 2 of Ch. 256, Laws 1955 is compiled as section 84-406.

#### Amendments

The 1955 amendment in subd. (1) deleted the words "of the county" which appeared after the words "county treasurer"; in subd. (3) inserted the word "property" between the words "personal" and "taxes"; in subd. (5) inserted the words "except as hereinafter provided" substituted the word "to" for "of" between the words "subject" and "assessment" and substituted the proviso clause for the words "viz., the first day in January in each year, which shall be the time of assessment for tax purposes of motor vehicles in stock, in dealer's possession or in dead storage, as well as in use, subsequent registrations, if any, of the same vehicle in the same year not being subject to payment of taxes"; in subd. (6) substituted the words "shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle

sales tax provided by section 53-617, Revised Codes of Montana, 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year" for the words "and such vehicle shall not be subject to assessment and taxation for said vehicle until the first day of January of the year next succeeding, but nothing herein contained shall exempt such vehicle from taxation in the possession of any person on said assessment date"; in subd. (7) inserted at the end of the second paragraph the words "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

The 1957 amendment in subd. (8) substituted the word "facts" for "fact" and deleted all of subd. (9) for text of which see parent volume.

#### Repealing Clause

Section 2 of Ch. 223, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Collateral References

Lack of proper automobile registration or operator's license as evidence of operator's negligence. 29 ALR 2d 963.

**53-116. (1759.2) Issuance of receipt and assignment of number plates.** Upon receipt of application for registration, in quintuplet, and payment of license fee and taxes as herein provided, the county treasurer shall file one copy of said application in his office; issue to the applicant two (2) copies of the application entitled "Owner's Certificate of Registration and Tax Receipt" one (1) of which shall be marked "file copy"; forward one (1) copy to the county clerk and recorder; and he shall daily forward to the registrar of motor vehicles one (1) copy of the application for registration. The county treasurer shall also, and at the same time, assign such motor



vehicle a distinctive number, viz., the license plate number, and deliver to the applicant two (2) license plates, as received from the registrar of motor vehicles which shall bear such distinctive numbers. The registrar shall ship said license plates to the various county treasurers by freight, so that they will be received by the county treasurer on or before January first of each year. It shall not be necessary for the county treasurer, in said receipt, to segregate the amount of said taxes for state, county, school district and municipal purposes.

**History:** En. Subd. 3, Sec. 1, Ch. 158, L. 1933; amd. Sec. 3, Ch. 72, L. 1937; amd. Sec. 1, Ch. 199, L. 1955.

#### **Amendment**

The 1955 amendment substituted the present first sentence for one which read "Upon receipt of application for registration and payment of license fee and taxes as herein provided, the county treasurer shall file one copy of said application in his office and issue to the applicant a receipt executed in triplicate, delivering one copy of said receipt to the applicant, one copy to the county clerk and recorder

and retaining one copy for his office; and he shall daily forward to the registrar of motor vehicles a duplicate copy of all applications for registration."

#### **Repealing Clause**

Section 2 of Ch. 199, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 199, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

**53-118. (1759.4) Application for dealer's license.** Every dealer in new motor vehicles, used motor vehicles, trailers, semitrailers, or automobile accessories shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for registration as a dealer on a blank to be furnished by the registrar for that purpose, and containing the information therein required. Each application must be accompanied by the registration fee hereinafter named. Dealers registration must be renewed and paid for annually, and an application for re-registration must be filed not later than January first of each year. Upon the registration of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer or semitrailer dealer, the registrar of motor vehicles shall assign to such dealer a distinctive serial registration number as a dealer and furnish every dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers); the letters "UD" if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters "DTR" if the dealer sells trailers and/or semitrailers (new or used) only. Only new motor vehicle dealers' license plates bearing the letter "D" shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one registration fee shall be required of any one dealer. Dealers of all classes are hereby prohibited from using or displaying dealer's license plates on any motor vehicle except those held for sale or used principally in the conduct of the dealer's business in selling, demonstrating or servicing. No dealer's license plates shall be used or displayed on vehicles normally used exclusively for hire or for purposes not incident to the business of a motor vehicle dealer. If

it shall appear to the satisfaction of the registrar of motor vehicles that any such dealer has used the dealer's license in a manner other than the one permitted above the registrar of motor vehicles may revoke such dealer's license. Any dealer violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five (\$25.00) dollars and not more than one hundred (\$100.00) dollars.

**History:** En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955.

#### **Amendment**

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

#### **Separability Clause**

Section 3 of Ch. 245, Laws 1955 read

"If any section, subdivision or sentence of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining portions of this act."

#### **Repealing Clause**

Section 4 of Ch. 245, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.** When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by the registrar of motor vehicles and upon payment therefor of a fee of five dollars (\$5.00). Such permit shall be for the transit of the vehicle only, and the vehicle shall not, at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever, for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application.

**History:** En. Sec. 1, Ch. 182, L. 1955.

#### **Title of Act**

An act to provide for the payment of fees and issuance of special permits on vehicles engaged in a single movement on the public highways of this state; providing for the fees for issuance of special permits; providing that such permits be

for the transit of the vehicle only and for one (1) transit only; providing that the special permits shall be issued by the county treasurer; providing that the fees collected under this act shall belong to the general road fund of the county; providing for the effective date of this act; and repealing all acts and parts of acts in conflict herewith.

**53-119.2. Fees credited to general road fund.** All fees collected under this act shall belong to the general road fund of the county and be for the use and benefit of that fund.

**History:** En. Sec. 2, Ch. 182, L. 1955.

#### **Repealing Clause**

Section 3 of Ch. 182, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 182, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

**53-120. (1759.6) Replacing number plates.** In the event of loss, mutilation, or destruction of number plates, the owner of the registered motor vehicle may obtain from the registrar of motor vehicles, duplicates thereof upon filing sworn declaration showing such fact and payment of a fee of two dollars (\$2.00).

**History:** En. Subd. 7, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 47, L. 1955.

#### **Amendment**

The 1955 amendment raised the fee from one dollar to two dollars.

**Repealing Clause**

Section 2 of Ch. 47, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 47, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

**53-121. (1759.6) Residents operating motor vehicles under licenses issued by any state other than Montana forbidden.** It shall especially be provided that a resident of the state of Montana shall not operate a motor vehicle under a license issued by any other state than Montana.

**History:** En. Subd. 8, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 195, L. 1953; amd. Sec. 1, Ch. 247, L. 1957.

with the provisions of section 53-114" which appeared at the end of this section.

**Amendment**

The 1957 amendment deleted the words "except when such vehicle is a part of an interstate fleet registered in accordance

**Repealing Clause**

Section 2 of Ch. 247, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**53-122. (1760) Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors—providing for transfer of funds from the motor vehicle fund of the registrar of motor vehicles to the motor vehicle recording fund (sometimes called the motor vehicle administrative fund)—providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in said motor vehicle recording fund for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles.** Registration or license fees shall be paid upon registration or re-registration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars (\$30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, trailers including house trailers, fifteen dollars (\$15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks, ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);



Busses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires;

Bicycles with motor attachments, one dollar (\$1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

All license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The funds in said county motor vehicle fund shall be used as follows:

(a) Fifty per cent (50%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, or the owners of which reside within the boundaries of any incorporated city of the state of Montana which lies within one (1) mile of the city limits of an incorporated city of the state of Montana having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, and twenty-five per cent (25%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any city in the state of Montana having a population of ten thousand (10,000), or more, according to the federal census of 1950, and which city is situated in a county which has an area of less than seven hundred and fifty (750) square miles, shall be held by the county treasurer and segregated from other county road funds and designated as "city road fund," to be used in the city from which fees were derived for the construction of permanent streets within the incorporated limits of such city.

(b) The license fees held in the city road fund, as hereinbefore provided, at the end of each thirty (30) day period beginning March 1, 1955, be paid by the county treasurer to the city treasurer to be held by such city treasurer in a separate fund designated as the "city road fund," shall be used by the city council of such city having the population of thirty-five thousand (35,000) or more, or by the city council of such city which lies within one (1) mile of the city limits of an incorporated city of the



state of Montana, having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, or by the city council of such city having a population of ten thousand (10,000), or more, according to the federal census of 1950 and situated in a county which has an area of less than seven hundred and fifty (750) square miles, only for the construction of permanent highways and streets within the boundaries of such incorporated city. Provided, that all construction of public highways and streets, the cost of which is to be paid out of the fund derived from the license fees as herein provided, shall be under the supervision of the county surveyor of the county within whose boundaries such city is situated, subject to the control of the said city council and surveyor to designate the public highway or street upon which the work is to be done, and the type of pavement to be used, and provided further, that the cost of supervision of the county surveyor shall not exceed five per cent (5%) of the cost of said work.

(c) The net license fees derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of the county from which the registration fee came, such fees, excepting apportionment to the city road fund, to be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county, including city streets forming component parts of arterial highways within the corporate cities of less population than thirty-five thousand (35,000), according to the federal census of 1930, within the boundaries of said county, other than any corporate city entitled to receive or expend the "city road fund," within the boundaries of said county.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ( $\frac{1}{2}$ ) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar (\$1.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semi-

trailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, mentioned and described in sections 53-110 and 53-112, and in section 53-135, shall hereafter be deposited in, and paid into, the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles.

There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees.

Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording fund more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955.

#### Compiler's Notes

Chapter 99 of Laws 1955 provided for the creation of "The Montana Fact-Finding Committee on Highways, Streets and Bridges," prescribed its duties and appropriated money for its expenses. Section 8 of that act appropriated the money and provided for an additional fee for the registration of busses, trucks, or trailers in 1956. This section reads as follows:

"Section 8. There is hereby appropriated from the state highway general fund to the committee the sum of thirty-five thousand dollars (\$35,000.00), or so much thereof as may be necessary to carry out the purposes of this act; provided, that in addition to all other fees prescribed by law, there shall be paid for each bus, truck, or trailer, registered for operation during the calendar year of 1956, at the time of registration, the following amounts:

"For each trailer over 6,000 lbs.  
and up to 24,000 lbs. -----\$0.50

"For each trailer over 24,000 lbs.---\$1.00

"For each passenger bus paying  
fees under the Gross Vehicle Weight  
Law -----\$1.00

"For each truck up to 6,000 lbs.---\$0.25

"For each truck over 6,000 lbs. and  
up to 24,000 lbs. -----\$0.50

"For each truck over 24,000 lbs.---\$1.00  
That all such additional registration fees shall be remitted monthly by the county treasurer, on or before the fifteenth day of the month after collection, to the treasurer of the state of Montana for deposit in the state highway fund to replace the thirty-five thousand dollars (\$35,000.00), or so much thereof as may be necessary to carry out the purposes of this act. Any excess funds shall remain in the highway fund for the construction, reconstruction, maintenance, engineering on the public highways of this state."

#### Amendment

The 1955 amendment in the first paragraph substituted the word "or" for a "comma" which appeared between the words "vehicles" and "trailers" and deleted the words "or automobile accessories" which appeared after this same word "trailers"; between the third and fourth paragraphs above deleted a former paragraph which read "Dealers in automobile accessories, except automobile dealers, ten dollars (\$10.00)"; in subd. (a) inserted the words "and twenty-five per cent (25%) of the net license fees

derived from the registration of motor vehicles, the owners of which reside within the boundaries of any city in the state of Montana having a population of ten thousand (10,000), or more, according to the federal census of 1950, and which city is situated in a county which has an area of less than seven hundred and fifty (750) square miles," after the words "federal census of 1930,"; in subd. (b) after the words "as hereinbefore provided," inserted the words "at the end of each thirty (30) day period beginning March 1, 1955, be paid by the county treasurer to the city treasurer to be held by such city treasurer in a separate fund designated as the 'city road fund,'" and after the words "federal census of 1930," inserted the words "or by the city council of such city having a population of ten thousand (10,000), or more, according to the federal census of 1950 and situated in a county which has an area of less than

seven hundred and fifty (750) square miles,"; in subd. (c) at the end of the first paragraph inserted the words "other than any corporate city entitled to receive or expend the 'city road fund,' within the boundaries of said county" and in the third paragraph substituted "or" for a "comma" between the words "vehicles" and "trailers" and deleted after the word "trailers" the words "or automobile accessories."

#### Repealing Clause

Section 2 of Ch. 41, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 41, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

### 53-123 to 53-128. (1760.1 to 1760.6) Repealed.

#### Repeal

These sections (Secs. 1 to 6, Ch. 121, L. 1929; Secs. 1 to 6, Ch. 126, L. 1933),

relating to the licensing and registration of out-of-state vehicles, were repealed by Sec. 1, Ch. 101, Laws 1959.

**53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.** (1) Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner thereof uses the vehicle while engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, Revised Codes of Montana, 1947, as amended, nor to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into as hereinafter set forth.

(2) (a) There is hereby created for the purpose of the administration of this act a state reciprocity board, which consists of five (5) members to be appointed by the governor. One of said members shall be a member of



the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state board of equalization; and one shall be the attorney for the Montana state highway commission. The members of the state reciprocity board shall meet in the offices of the state highway commission at the state capitol and organize as a state reciprocity board during the first week in July, 1955, or as soon thereafter as possible. At the first annual meeting and at each annual meeting thereafter the board shall elect a secretary who may be, but need not be, a member of said board, and the board shall elect a chairman from its own membership who shall hold office for one (1) year. Election as chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every thirty (30) days, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

(b) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Three (3) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least three (3) members.

(3) (a) The state reciprocity board shall have the power to enter into agreements or arrangements with the duly authorized representatives of other states, the District of Columbia, territories or possessions of the United States and foreign states, provinces or countries granting exemption to owners of vehicles which are properly registered or licensed in such jurisdictions, and upon which evidence of registration is conspicuously displayed, from the payment, wholly or partially, of any taxes, fees or other charges imposed upon such owners with respect to the ownership or operation of such vehicles under the laws of this state. Such agreements or arrangements shall provide that owners of vehicles registered or licensed in this state who operate vehicles upon the highways of such other states, the District of Columbia, territories or possessions of the United States and foreign states, provinces or countries shall receive substantially equivalent exemptions, benefits and privileges as are extended to owners of vehicles from such jurisdictions in this state.

(b) Agreements or arrangements entered into under the authority herein granted may contain provisions authorizing an owner or owners of one of the states, district, territories or possessions of the United States or foreign states, provinces or countries which is a party thereto to register or license vehicles in another jurisdiction which is a party thereto. Vehicles registered or licensed in one of such jurisdictions under such provision shall be exempt from registration or licensing requirements in the other jurisdiction or jurisdictions which are parties thereto and shall be entitled to all exemptions, benefits and privileges granted with respect to other vehicles registered or licensed in such jurisdiction, as to such interstate operations.



(c) Agreements or arrangements entered into under the authority herein granted may contain provisions denying the exemptions, benefits and privileges granted thereunder to any owner who violates conditions stated therein or who violates rules and regulations for the administration of reciprocal exemptions, benefits and privileges issued by the state reciprocity board.

(d) The state reciprocity board is authorized to examine the legal requirements of motor vehicle registration, license and weight fee statutes of states which grant reciprocal privileges to out-of-state owners but which do not authorize negotiation or execution of agreements by administrative officials and it is authorized to determine, by such examination, and to declare the extent and nature of the reciprocal exemptions, benefits and privileges to which owners of vehicles from such states shall be entitled under the laws of this state.

(e) All agreements, arrangements, declarations and rules and regulations authorized by this section shall be in writing and shall become effective when filed with the secretary for the state reciprocity board who shall make copies available to the public upon request.

**History:** En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955.

#### Amendment

The 1955 amendment in subd. (1) substituted the sentence "The treasurer shall thereupon issue to the applicant a copy of the application entitled 'owner's certificate of registration receipt' and forward a duplicate copy of certificate of registration to the registrar of motor vehicles" for a former one which read "The treasurer shall thereupon forward to the registrar of motor vehicles such application form"; deleted a sentence which read "Upon receipt of the application for registration, the registrar of motor vehicles shall issue to the owner of the vehicle a

registration receipt"; added a new subd. (2) and renumbered former subd. (2) as subd. (3); in subd. (3) (a), (c) and (d) substituted "state reciprocity board" for "registrar of motor vehicles" and in (e) of subd. (3) substituted "with the secretary for the state reciprocity board" for "in the office of the registrar of motor vehicles."

#### Repealing Clause

Section 2 of Ch. 143, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 143, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

## CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS —ACCIDENTS—SERVICE OF PROCESS

### 53-203. Operation of motor vehicle as appointment of attorney, etc.

#### Operator of Truck as Agent

Owner of truck-tractor, not a common carrier, and the driver thereof, were agents of common carrier authorized to transport freight in Canada and Montana, where at time of collision truck-tractor was hauling freight accepted by common

carrier as a carrier for hire under an arrangement whereby the owner of the truck-tractor received a percentage of the freight charges collected by the common carrier. *Thomas v. Warren*, 162 F Supp 101, 102, 106.

### 53-204. Service of process, how made—fees.

#### Actual Delivery to Defendant

Copy of notice and summons must be actually delivered to defendant by regis-

tered mail. *Bucholz v. Hutton*, 153 F Supp 62, 67, 68.

**Delay in Affidavit**

Delay in filing affidavit of compliance is not ground for setting aside service. *Bucholz v. Hutton*, 153 F Supp 62, 68.

**Insufficient Service of Process**

Service of process was insufficient for failure to comply with the provisions of this section where (1) notice of service was mailed by plaintiff's attorney before service was actually made upon the sec-

retary of state; (2) the notice was not sent by registered mail "requiring personal delivery" to the defendant; and (3) the defendant did not himself sign the return receipt, and there was no evidence that anyone else had authority to sign the receipt on his behalf or that he actually received the notice of service and copy of summons and complaint. *Bucholz v. Hutton*, 153 F Supp 62, 68.

## CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

Section 53-419. Supervisor to administer act—appeal to court.

53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance.

53-423. Further exceptions to requirement of security.

53-434. Proof required upon certain convictions.

53-448. Surrender of license and registration.

**53-418. Definitions.**

### DECISIONS UNDER FORMER LAW

**"Owner"**

A wife was co-owner with her husband of a vehicle, but her registration, even though indivisible from that of her husband, was excluded from the operation of section 53-422, after the husband was

involved in an accident with another vehicle and he became subject to the provisions of the act regarding suspension. *State ex rel. Penhale v. State Highway Patrol*, 133 M 162, 321 P 2d 612, 613.

**53-419. Supervisor to administer act—appeal to court.**

(a). \* \* \* [Same as parent volume.]

(b) An executive assistant to the supervisor shall be appointed by the "Montana highway patrol board," subject to and in accordance with sections 31-105 and 31-106, who shall be vested with full power and authority to act for and on behalf of the supervisor in the administration of this act; and who shall perform such other and further duties as shall be prescribed by the Montana highway patrol board. The salary of the executive assistant shall be the same as that of a captain.

(c). \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 204, L. 1951; amd. Sec. 1, Ch. 164, L. 1957.

thousand two hundred dollars (\$4,200.00) per year."

**Amendment**

The 1957 amendment in the last sentence of subd. (b) substituted the words "the same as that of a captain" for "four

**Repealing Clause**

Section 2 of Ch. 164, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### DECISIONS UNDER FORMER LAW

**Right to Appeal**

An automobile co-owner had the right to a writ of mandamus to regain license plates taken from her automobile by the highway patrol acting under the authority

of 53-422 following an accident of the other co-owner while driving another vehicle. *State ex rel. Penhale v. State Highway Patrol*, 133 M 162, 321 P 2d 612, 614.

**53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance.**

(a). \* \* \* [Same as parent volume.]

(b) The supervisor shall, within sixty (60) days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and the registrar, upon request of the supervisor, shall suspend all registrations of each and every owner or co-owner of a motor vehicle, which is in any manner involved in such accident, except those registrations of co-owned vehicles not involved in such accident and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonresident the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in the sum so determined by the supervisor; provided notice of the suspension of such registration or registrations shall be sent by the registrar to such operator and owner not less than ten (10) days prior to the effective date of such suspension and such notice shall state the amount required by the supervisor as security. Where erroneous information is given the supervisor with respect to the matters set forth in subdivisions 1, 2 or 3 of subsection (c) of this section, he shall take appropriate action as hereinbefore provided, within sixty (60) days after the receipt by him of correct information with respect to said matters.

(c). \* \* \* [Same as parent volume.]

**History:** En. Sec. 5, Ch. 204, L. 1951; amd. Sec. 1, Ch. 83, L. 1959.

#### Amendment

The 1959 amendment in subd. (b) substituted "each and every owner or co-owner of a motor vehicle, which is" for

"each owner of a motor vehicle"; inserted the words "except those registrations of co-owned vehicles not involved in such accident" and deleted the phrase "and if such operator is a nonresident the privilege of operating a motor vehicle in any manner involved in such accident."

### DECISIONS UNDER FORMER LAW

#### Operation and Effect

The authority to suspend all registrations of each owner of a motor vehicle did not extend to a wife who was the co-owner, with her husband, of an automobile, even though the husband, while driving another vehicle of his own, was involved in a situation calling for the suspension of registrations of the owners of vehicles. *State ex rel. Penhale v. State Highway Patrol*, 133 M 162, 321 P 2d 612, 614.

#### Right to Writ of Mandamus

Mandamus was the proper remedy for a wife to regain license plates for an automobile she owned with her husband, where the plates had been removed by the highway patrol following the husband's involvement in an accident while operating another vehicle which he owned. *State ex rel. Penhale v. State Highway Patrol*, 133 M 162, 321 P 2d 612, 614.

**53-423. Further exceptions to requirement of security.** The requirements as to security and suspension in section 53-422 shall not apply:

1. to the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;
2. to the operator or the owner of a motor vehicle legally parked or legally stopped at the time of the accident;
3. to the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who has been operating such motor vehicle without such permission; nor



4. if, prior to the date that the supervisor would otherwise suspend license and request and require of the registrar suspension of registration or nonresident's operating privilege under section 53-422, there shall be filed with the supervisor evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident; nor

5. if, prior to the date that the supervisor would otherwise suspend the license or the nonresident's operating privilege under section 53-422, there shall be filed with the supervisor evidence satisfactory to him that the person who would otherwise be required to file security has in any manner settled the claims of the other persons involved in the accident and if the supervisor determines that, considering the circumstances of the accident and the settlement, the purposes of this act and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. For the purpose of administering this section, the supervisor may consider a settlement made by an insurance company as the equivalent of a settlement made directly by the insured.

**History:** En. Sec. 6, Ch. 204, L. 1951; amd. Sec. 1, Ch. 187, L. 1957; amd. Sec. 2, Ch. 83, L. 1959.

#### Amendments

The 1957 amendment substituted a semicolon for a period and added the word "nor" to the end of subd. 4 and added subd. 5.

The 1959 amendment, in subd. (2), inserted the words "or legally stopped."

#### Repealing Clauses

Section 2 of Ch. 187, Laws 1957 and Sec. 3 of Ch. 83, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 187, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

**53-434. Proof required upon certain convictions.** (a) Whenever the supervisor or the board, under any of the laws of this state, suspends, revokes, or cancels the license of any person upon receiving record of a conviction or a forfeiture of bail, the supervisor or the board, shall also request and require of the registrar the suspension of the registration for all motor vehicles registered in the name of such person, except that the registrar shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

(b) Such license and registration shall remain suspended, revoked or cancelled and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(c) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an



appearance for trial for any offense requiring the suspension, revocation or cancellation of a license, or for operating a motor vehicle upon the highways without being licensed to do so, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

(d) Whenever the supervisor or the board suspends, revokes or cancels a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended, revoked or cancelled unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

**History:** En. Sec. 17, Ch. 204, L. 1951; amd. Sec. 1, Ch. 106, L. 1957.

serted the word "the" between the words "by" and "final."

**Amendment**

The 1957 amendment inserted the words "or the board" immediately following "supervisor" each time they appear in subds. (a) and (d) and in subd. (c) in-

**Repealing Clause**

Section 2 of Ch. 106, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**53-448. Surrender of license and registration.** Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this act, shall have been cancelled or terminated, or who shall neglect to furnish other proof upon request of the supervisor shall immediately return his license and registration to the supervisor. If any person shall fail to return to the supervisor the license or registration as provided herein, the supervisor shall forthwith direct any peace officer or highway patrolman to secure possession thereof and to return the same to the supervisor. The supervisor shall thereupon forward the registration to the registrar.

**History:** En. Sec. 31, Ch. 204, L. 1951; amd. Sec. 1, Ch. 107, L. 1957.

**Repealing Clause**

Section 2 of Ch. 107, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1957 amendment inserted the words "or highway patrolman" in the second sentence.

**CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES**

- Section 53-615. Additional fees on trucks, tractors, trailers and semitrailers.  
 53-615.1. Three unit combination—fees in lieu of gross weight fees provided in 53-615—marking on tractor.  
 53-616. Additional fees on trucks, truck-tractors, trailers and semitrailers from other states.  
 53-617. Sales tax on new passenger vehicles.  
 53-618. Time for payment of fees—half fee after July first.  
 53-619. Time for payment of fees by nonresidents.  
 53-623. Violation of act—penalty—excess weight—unloading or paying of deficiency.  
 53-624. Enforcement of act.  
 53-625. Reciprocity—proportional registration of fleets of motor vehicles engaged in interstate commerce.  
 53-628. Trucks, truck tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready mix concrete, equipment or special vehicles.

- 53-639. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly-owned special mobile equipment.  
 53-640. Issuance of identification plate and receipt—contents.  
 53-641. Attaching receipt to equipment—inspection.  
 53-642. "Special mobile equipment" defined.  
 53-643. Expiration date of plate.

### 53-615. Additional fees on trucks, tractors, trailers and semitrailers.

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

#### Schedule I:

Up to 6,000 lbs.-----	\$ 6.00
6,001 lbs. or more, and less than 8,000 lbs.-----	10.00
8,001 lbs. or more, and less than 10,000 lbs.-----	14.00
10,001 lbs. or more, and less than 12,000 lbs.-----	16.00
12,001 lbs. or more, and less than 14,000 lbs.-----	18.00
14,001 lbs. or more, and less than 16,000 lbs.-----	22.00
16,001 lbs. or more, and less than 18,000 lbs.-----	30.00
18,001 lbs. or more, and less than 20,000 lbs.-----	40.00
20,001 lbs. or more, and less than 22,000 lbs.-----	50.00
22,001 lbs. or more, and less than 24,000 lbs.-----	75.00
24,001 lbs. or more, and less than 26,000 lbs.-----	100.00
26,001 lbs. or more, and less than 28,000 lbs.-----	125.00
28,001 lbs. or more, and less than 30,000 lbs.-----	165.00
30,001 lbs. or more, and less than 32,000 lbs.-----	210.00
32,001 lbs. or more, and less than 34,000 lbs.-----	255.00
34,001 lbs. or more, and less than 36,000 lbs.-----	300.00
36,001 lbs. or more, and less than 38,000 lbs.-----	345.00
38,001 lbs. or more, and less than 40,000 lbs.-----	390.00
40,001 lbs. or more, and less than 42,000 lbs.-----	435.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight described above, and as set by the licensee in his application except as otherwise provided in this act the following fees:

#### Schedule II:

##### Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use-----	Exempt
Up to 2,500 lbs. for commercial use-----	\$ 3.50
2,501 lbs. or more, and less than 6,000 lbs.-----	4.50
6,001 lbs. or more, and less than 8,000 lbs.-----	12.00
8,001 lbs. or more, and less than 10,000 lbs.-----	14.00
10,001 lbs. or more, and less than 12,000 lbs.-----	16.00
12,001 lbs. or more, and less than 14,000 lbs.-----	18.00
14,001 lbs. or more, and less than 16,000 lbs.-----	22.00
16,001 lbs. or more, and less than 18,000 lbs.-----	30.00

18,001 lbs. or more, and less than 20,000 lbs.	40.00
20,001 lbs. or more, and less than 22,000 lbs.	50.00
22,001 lbs. or more, and less than 24,000 lbs.	75.00
24,001 lbs. or more, and less than 26,000 lbs.	100.00
26,001 lbs. or more, and less than 28,000 lbs.	125.00
28,001 lbs. or more, and less than 30,000 lbs.	165.00
30,001 lbs. or more, and less than 32,000 lbs.	210.00
32,001 lbs. or more, and less than 34,000 lbs.	255.00
34,001 lbs. or more, and less than 36,000 lbs.	300.00
36,001 lbs. or more, and less than 38,000 lbs.	345.00
38,001 lbs. or more, and less than 40,000 lbs.	390.00
40,001 lbs. or more, and less than 42,000 lbs.	435.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided in this act, a fee equal to fifty cents (50c) for each foot of over-all trailer body length, exclusive of bumpers and hitch.

Provided, that in addition to the fees provided for in Schedules I and II of this act, for each motor truck, truck-tractor, trailer, or semitrailer hauling loads in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, Revised Codes of Montana, 1947, as amended by section 1, chapter 73, Laws of 1953, and all other amendments thereto, there shall be collected a fee of fifty dollars (\$50.00) for each two thousand (2,000) pounds, or fraction thereof.

Provided, that in lieu of the additional fee provided in this section there shall be collected a fee of five dollars (\$5.00) on any motor truck, truck-tractor, trailer or semitrailer used only for the purpose of transporting any air compressor, rock crusher, conveyor, hoist, wrecker, donkey engine, cook house, tool house or bunk house attached to or made a part of such motor truck, trailer or semitrailer.

Provided further, on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, except motor trucks owned and operated by cooperative associations or cooperative marketing associations, shall be paid and collected annually a fee equal to twenty per cent (20%) of the fees provided in Schedule I and Schedule II above; provided, however, the minimum fee under Schedule I and Schedule II shall be four dollars (\$4.00). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

Provided further, that there shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on motor trucks, trailers and semitrailers, used exclusively in hauling livestock, logs, ready-mix concrete and pole trailers



and on "low-boy trailers," used exclusively for the hauling of equipment and on tractors permanently attached to such "low-boy trailers."

When the gross weight license fee applied for on any vehicle exceeds twenty-four thousand (24,000) pounds, licenses for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three-months' period for one-fourth ( $\frac{1}{4}$ ) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1.00) shall be charged. The state highway commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

No vehicle licensed under the provisions of this section shall be operated over the public highways unless the owner and/or operator thereof within ten (10) days after the expiration of any such three-month period apply for, and pay the required fee for, a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highways after the expiration of said ten (10) days, shall be guilty of a misdemeanor, and in addition shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police shall impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol, until such requirement is met.

Provided further, that there shall be paid and collected annually for each bus or auto stage with the exception of school busses the sum of seven dollars (\$7.00) per seat exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof; provided further, that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule hereinabove established; provided further, that school busses shall not be exempt if they enter charter service.

**History:** En. Sec. 1, Ch. 219, L. 1951; amd. Sec. 1, Ch. 139, L. 1953; amd. Sec. 1, Ch. 258, L. 1955.

vided the act should be in effect from and after January 1, 1956.

#### **Amendment**

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

#### **Repealing Clause**

Section 2 of Ch. 258, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 258, Laws 1955 pro-

#### **Construction**

Appeal by the highway commission from a declaratory judgment was dismissed as moot where the question was whether or not the 1953 amendment which increased the truck license fees was effective as to licensees who had their license at the time of the effective date of the increase, since all such licenses expired at the end of 1953. *Bell v. State Highway Comm.*, 128 M 122, 271 P 2d 425, 427. (Dissenting opinion, 128 M 122, 271 P 2d 425, 427.)

**53-615.1. Three unit combination—fees in lieu of gross weight fees provided in 53-615—marking on tractor.** In lieu of the gross weight fees

provided in section 1 of chapter 219 of the Session Laws of 1951, as amended by section 1 of chapter 139 of the Session Laws of 1953, or as subsequently amended (being section 53-615 of the Revised Codes of Montana, 1947), the owner of any motor truck or truck-tractor used or to be used on the highways of the state of Montana in connection with two (2) trailers or semitrailers at the same time, as a three unit combination, shall register all such vehicles to be operated by such owner as three unit combinations, in the following manner:

(1) By paying the registration and fees covering the maximum practical gross vehicle weight for such truck or truck-tractor, but not less than the actual operating gross weight under the provisions of section 53-122, as amended, section 53-615, as amended, and section 53-114, as amended, and

(2) By registering such trailers in accordance with the provisions of section 53-114, as amended, and section 53-122, as amended, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with the provisions of section 53-615, as amended, on each two (2) trailers, on the combined gross vehicle weight, computed as a single unit.

(3) Vehicles on which fees are paid in accordance with this provision shall be marked with a distinctive mark to be designated by the highway commission and the tractor, truck-tractor, semitrailers or trailer shall have marked thereon the gross vehicle weight for which tax has been paid but nothing herein shall be construed as authorizing axle loads in excess of those provided by section 32-1123, as amended, of the Revised Codes of Montana, 1947.

**History:** En. Sec. 1, Ch. 251, L. 1955; amd. Sec. 1, Ch. 211, L. 1959.

the words "total gross vehicle weight for which tax has been paid on the combined motive power and trailing load."

#### Amendment

The 1959 amendment, in subd. (3), inserted the words "semitrailers or trailer"; and substituted the words "gross vehicle weight for which tax has been paid" for

#### Repealing Clauses

Section 2 of Ch. 251, Laws 1955 and Sec. 2 of Ch. 211, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**53-616. Additional fees on trucks, truck-tractors, trailers and semitrailers from other states.** In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer and semitrailer licensed for that year in another jurisdiction and operated upon an itinerant basis in this state upon each entrance into the state of Montana, based upon the application of the nonresident operator, a fee to be computed as follows:

Five dollars (\$5.00) for each trip for the first two hundred (200) miles or less, seven dollars and fifty cents (\$7.50) for each trip over two hundred (200) miles, and up to four hundred (400) miles or less, ten dollars (\$10.00) for each trip over four hundred (400) miles, on any vehicle or on each truck, truck-tractor, semitrailer and full trailer in a combination of said vehicles of over six thousand (6,000) pounds gross weight; provided, however, such fees shall not apply to any trailer the principal use of which is living quarters, temporary or permanent or to any

vehicle of a carnival which is under contract with a state, county or district fair association.

Such temporary trip permits shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by the state highway commission, and shall be displayed at all times while such vehicle is being operated on the highways of this state by posting the same upon the windshield of each such vehicle or in another prominent place thereon where it may be readily legible. Provided further, that the state highway commission may limit the operation of such vehicles in this state to a definite period of time and provided further that each trip shall be defined as the total number of miles traveled within the state of Montana.

**History:** En. Sec. 2, Ch. 219, L. 1951; to amendment see parent volume.  
amd. Sec. 1, Ch. 177, L. 1955.

#### Amendment

The 1955 amendment made numerous changes in this section. For section prior

#### Repealing Clause

Section 2 of Ch. 177, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**53-617. Sales tax on new passenger vehicles.** In consideration of the right to use the highways of the state of Montana, and from and after January 1, 1952, there shall be imposed upon all new passenger motor vehicles for which a license is sought, and which have not been otherwise assessed and not subject to assessment and taxation in Montana, a motor vehicle sales tax, as follows:

One and one-half per cent ( $1\frac{1}{2}\%$ ) of the F. O. B. factory list price or F. O. B. port of entry list price of the automobile, during the first quarter of the year; one and one-eighth per cent ( $1\frac{1}{8}\%$ ) of said list price during the second quarter of the year and three-fourths ( $\frac{3}{4}$ ) of one per cent (1%) during the third quarter of the year, and three-eighths ( $\frac{3}{8}$ ) of one per cent (1%) during the fourth quarter of the year, this assessment to be made when the owner applies for his original Montana license through his county treasurer. Provided, however, that in case the manufacturer or importer fails to furnish the F. O. B. factory list price or F. O. B. port of entry list price the state highway commission is authorized to use such published price lists as may be available. The proceeds from this tax should be remitted to the state treasurer every thirty (30) days for credit of the state highway fund.

**History:** En. Sec. 3, Ch. 219, L. 1951; appears and added the next to the last  
amd. Sec. 1, Ch. 103, L. 1959. sentence.

#### Amendment

The 1959 amendment, in the second paragraph, inserted the words "or F. O. B. port of entry list price" the first time it

#### Repealing Clause

Section 2 of Ch. 103, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**53-618. Time for payment of fees—half fee after July first.** Residents of the state of Montana, or nonresidents, who owns trucks, trailers or semitrailers, busses or new passenger automobiles and operate the same upon the highways of the state of Montana shall at the time they make application for their Montana license as provided for in section 53-114, Revised Codes of Montana, 1947, pay the fees herein prescribed; provided that said residents or nonresidents who make application for a license



after the first day of July of any year shall pay one-half ( $\frac{1}{2}$ ) of the fees provided for herein.

**History:** En. Sec. 4, Ch. 219, L. 1951;  
amd. Sec. 1, Ch. 175, L. 1955.

**Amendment**

The 1955 amendment inserted the words "or nonresidents" both times they appear.

**Repealing Clause**

Section 2 of Ch. 175, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**53-619. Time for payment of fees by nonresidents.** Nonresident owners or operators of trucks, trailers and semitrailers shall immediately upon their arrival in the state of Montana contact the nearest state highway patrol or any state highway commission office or the county sheriff or the county treasurer's office and secure the license and pay the fees as in this act prescribed; provided that all fees collected shall immediately be remitted to the county treasurer.

**History:** En. Sec. 5, Ch. 219, L. 1951;  
amd. Sec. 1, Ch. 89, L. 1955.

**Amendment**

The 1955 amendment inserted the words "owners or operators of" after the first word of the section and inserted the words "or any state highway commission office" after the word "patrol."

**Repealing Clause**

Section 2 of Ch. 89, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 89, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 1, 1955.

**53-623. Violation of act—penalty—excess weight—unloading or paying of deficiency.** Any owner or operator of a truck, trailer or semitrailer, bus, or automobile who violates any provision of this act shall upon conviction thereof be deemed guilty of a misdemeanor and punished by a fine of not more than three hundred dollars (\$300.00) or by a sentence of not more than sixty (60) days in the county jail or both. Whenever the gross laden weight of any truck, trailer or semitrailer operated upon any highway in this state exceeds the gross maximum weight marked upon such vehicle pursuant to section 53-628 hereof, or exceeds the gross vehicle weight as is shown on the owner's certificate of registration and tax receipt pursuant to 53-107, Revised Codes of Montana, 1947, as amended, or as is shown on the gross vehicle weight receipt pursuant to section 53-620 hereof, the operator thereof shall be subject to the penalties mentioned in this section and shall be required to forthwith unload all cargo in excess of the gross maximum weight for which such vehicle is taxed; and such excess cargo shall not be reloaded until payment shall have been made to the nearest county treasurer of the amount of the deficiency in the fee provided for in section 53-615 hereof, based upon the gross weight of such vehicle immediately before the unloading of such excess cargo, provided it does not exceed the legal axle weight. Provided, however, that if the gross maximum weight marked upon such vehicle is less than the gross vehicle weight shown on the owner's registration tax receipt or on the gross vehicle weight receipt, and such receipt shows the gross vehicle weight fee has been paid for the weight stated thereon, there shall be no violation for improper marking.

**History:** En. Sec. 9, Ch. 219, L. 1951;  
amd. Sec. 1, Ch. 226, L. 1959.

**Amendment**

The 1959 amendment inserted in the second sentence the words "or exceeds the gross vehicle weight as is shown on the owner's certificate of registration and tax receipt pursuant to 53-107, or as is shown on the gross vehicle weight receipt pursuant to section 53-620 hereof" and the words "shall be subject to the penal-

ties mentioned in this section and"; and added the proviso forming the final sentence.

**Repealing Clause**

Section 2 of Ch. 226, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**53-624. Enforcement of act.** It shall be the duty of the Montana state highway patrol and any designated and duly appointed employee of the state highway commission to enforce the provisions of this act and each member thereof is hereby instructed to make examinations and inspection of trucks, trailers and semitrailers, busses, or automobiles operating upon the highways in this state, to ascertain whether or not the provisions of this law have been complied with.

**History:** En. Sec. 10, Ch. 219, L. 1951; amd. Sec. 1, Ch. 156, L. 1955.

**Amendment**

The 1955 amendment inserted the words "and any designated and duly appointed employee of the state highway commission."

**Repealing Clause**

Section 2 of Ch. 156, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 156, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

**53-625. Reciprocity — proportional registration of fleets of motor vehicles engaged in interstate commerce.** (a) Reciprocity shall be granted, notwithstanding any thing to the contrary herein, in accordance with section 53-129, Revised Codes of Montana, 1947, as amended.

(b) Any owner or operator engaged in operating fleets of two or more motor vehicles in this state in interstate commerce may license such fleet for operation in this state by filing a sworn application with the state highway commission and an identical copy with the county treasurer or county treasurers of the proper county or counties of licensing declaring the total mileage operated during the preceding calendar year or fiscal year, as designated by the state reciprocity board, in this state and in all states having on file with the state reciprocity board a valid agreement or arrangement providing for proportional payment of the annual fees provided in this act. Said statement shall describe and identify each such vehicle to be operated in this state during the ensuing license year. At the discretion of the state reciprocity board, such interstate fleet may be licensed on the basis of proportional vehicle proration or proportional dollar proration. For the purpose of this act proportional vehicle proration is defined as the licensing of a sufficient number of certain vehicles under this section to produce total fee payments not less than an amount obtained by applying the proportion of in-state fleet miles to total fleet miles, as reported in said statement, to the fees which would otherwise be required for total fleet licensing in this state. Proportional dollar proration is defined as the payment of sufficient fees under this section to equal the amount produced by applying the proportion of in-state fleet miles to total fleet miles, as reported in said statement, to the fees which would otherwise be required for total fleet licensing in this state. The state high-

way commission, on payment of the proper fees under this section, shall upon payment of a fee of two dollars for each motor vehicle issue distinctive plates, stickers or other identification for each vehicle named in said statement identifying it as an interstate fleet which shall be exempt from all further license and weight fee requirements of this state, which may be specified in Title 53, Chapter 6, Replacement Volume Number Three (3) of the Revised Codes of Montana, 1947, and acts amendatory, provided, that each of such vehicles is properly and duly licensed and registered in this state or some other state, district, possession or territory of the United States or some foreign province, state or country. The proportional licensing provisions of this section shall apply to vehicles added to said fleet and operated in this state during the license year. Montana operators electing to license an interstate fleet shall comply with all requirements of this section relating to the payment of property taxes on his entire fleet.

Mileage proportions for interstate fleets not operated in this state during the preceding year will be determined by the state highway commission upon the sworn application of the applicant on forms to be supplied by the state highway commission, which will show the operations of the preceding year in other states and the estimated operation in Montana or if no operations were conducted the previous year a full statement of the proposed method of operation.

Any owner or operator complying with and being granted proportional licensing shall preserve the records on which the application is made for a period of four (4) full years following the year upon which said application is based. Upon request of the state highway commission, the owner or operator agrees to make such records available to the state highway commission at its offices for audit as to accuracy of computation and payments, or to pay the costs of an audit by the state highway commission or its duly appointed representative at the home office of the owner or operator. If by audit, it is determined that the owner or operator should have licensed more vehicles or paid higher fees in Montana under provisions of this paragraph, the state highway commission may deny such owner or operator the right of any further benefits by reason of any reciprocal agreement or arrangement until the fees for such additional vehicle or vehicles which should have been licensed are paid to the state highway commission. All license fees which should have been paid under the provisions of this paragraph shall be a lien upon all the property of the owner or operator and such lien shall attach at the time the license fees shall be determined by the state highway commission and shall have the effect of an execution duly levied on such property of the owner or operator and shall so remain until said additional fees, so determined, are paid or the property sold for the payment thereof.

(c) The license and weight fees provided for in this act shall mean the fees specified in Title 53, Chapter 6, Replacement Volume Number Three (3) of the Revised Codes of Montana, 1947, and acts amendatory.

**History:** En. Sec. 11, Ch. 219, L. 1951;  
amd. Sec. 1, Ch. 231, L. 1957.

**Amendment**

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

**Repealing Clause**

Section 2 of Ch. 231, Laws 1957 repealed all acts and parts of acts in conflict therewith.



**Effective Date**

Section 3 of Ch. 231, Laws 1957 provided the act should be in effect from and

after its passage and approval. Approved March 12, 1957.

**53-628. Trucks, truck tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready mix concrete, equipment or special vehicles.** Each truck, truck tractor or bus shall have permanently marked in clearly visible letters and numbers at least two (2) inches in height on the driver's side of said vehicle, the maximum gross weight or maximum gross weight of the combinations of vehicles or seating capacity for which said vehicle is taxed under this act. Any such vehicle registered and taxed as a farm, logging, livestock, ready mix concrete, low boy or special fee vehicle shall have in addition thereto, and equally visible, the words "Farm Vehicle," "Logging Vehicle," "Livestock Vehicle," "Mixer Vehicle," "Equipment Vehicle" or "Special Vehicle."

**History:** En. Sec. 14, Ch. 219, L. 1951; amd. Sec. 1, Ch. 104, L. 1957.

in the second sentence inserted the words "ready mix concrete, low boy or special fee" and "Mixer Vehicle," "Equipment Vehicle" and "Special Vehicle."

**Amendment**

The 1957 amendment in the first sentence substituted the words "truck tractor" for "trailer, semitrailer," "on the driver's side" for "on either side" and inserted the words "or maximum gross weight of the combinations of vehicles";

**Repealing Clause**

Section 2 of Ch. 104, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**53-639. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly-owned special mobile equipment.** Every person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as hereinafter defined, and occasionally moves said equipment on, over, or across the highways of the state of Montana shall not be subject to registration of said equipment nor be required to pay the fees and charges provided for by chapter 219 of the Session Laws of the Thirty-second Legislative Assembly of the state of Montana, 1951 [53-615 to 53-629], as the same is now, or may hereafter be, amended, but prior to any movement on the highways, each piece of such equipment shall display an equipment identification plate attached thereto. Annual application for the identification plate shall be made to the county treasurer prior to or before any such piece of equipment is moved over the highway, on a form furnished by the registrar of motor vehicles, together with the payment of a fee of five dollars (\$5.00). The fees collected under this act shall belong to the general road fund of the county and be for the use and benefit of that fund. Provided, that publicly-owned special mobile equipment and equipment and implements of husbandry designed and used exclusively by an owner in the conduct of his own farming operations are exempt from the provisions of this act.

**History:** En. Sec. 1, Ch. 183, L. 1955.

**Title of Act**

An act to provide for the payment of fees and issuance of identification plates to persons, firms and corporations moving special mobile equipment occasionally over the highways; providing for the

fees for issuance of identification plates; providing for the collection of such fees by the county treasurer; providing for display of identification plates and receipts for same on each piece of equipment; providing for deposit of such funds from identification plates in the general road fund of the county; providing for

exemption of publicly-owned special mobile equipment from said fees; defining special mobile equipment; providing for expiration date of identification plates.

**53-640. Issuance of identification plate and receipt—contents.** The county treasurer shall issue to each applicant a single metal plate with a distinguishing number and a receipt for the fee collected, which receipt shall contain the name and address of the applicant, the number of the plate issued, the serial number of the equipment and a brief description of the same.

**History:** En. Sec. 2, Ch. 183, L. 1955.

**53-641. Attaching receipt to equipment—inspection.** The receipt shall be carried in a suitable container attached to the equipment or immediately available for inspection of any peace officer or highway patrolman.

**History:** En. Sec. 3, Ch. 183, L. 1955.

**53-642. “Special mobile equipment” defined.** “Special mobile equipment” means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including road construction equipment or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section; provided, that the term “special mobile equipment” does not include any of the following:

(a) A vehicle such as a truck, truck-tractor, trailer, or semitrailer, originally designed for the transportation of persons or property to which machinery has been attached;

(b) Dump truck and truck-mounted transit mixers, or any rubber-tired truck or trailer, self-propelled, or towed, from which machinery can be removed and such vehicle used to transport persons or property.

**History:** En. Sec. 4, Ch. 183, L. 1955.

**53-643. Expiration date of plate.** The identification plate for special mobile equipment shall expire on December thirty-first of each year in which it was issued.

**History:** En. Sec. 5, Ch. 183, L. 1955.

## TITLE 54—NARCOTIC DRUGS

Chapter 1. Uniform drug act—regulation, possession and sale of narcotics, 54-101, 54-103, 54-104, 54-106, 54-109, 54-119, 54-124, 54-125.

### CHAPTER 1—UNIFORM DRUG ACT—REGULATION, POSSESSION AND SALE OF NARCOTICS

Section 54-101.	Definitions, words and phrases.
54-103.	Manufacturers and wholesalers.
54-104.	Qualification for licenses.
54-106.	Sales by apothecaries.
54-109.	Record to be kept.
54-119.	Narcotic drugs to be delivered to state, official, etc.
54-124.	Enforcement and cooperation.
54-125.	Penalties.

**54-101. Definitions, words and phrases.** The following words and phrases, as used in this act shall have the following meanings, unless the context otherwise requires:

(1) to (7). \* \* \* [Subdivisions (1) to (7), same as parent volume.]

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Montana state board of pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(9) "Laboratory" means a laboratory approved by the Montana state board of pharmacy as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) to (19). \* \* \* [Subdivisions (10) to (19), same as parent volume.]

(20) "Official written order" means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the Montana state board of pharmacy.

(21). \* \* \* [Same as parent volume.]

(22). \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 176, L. 1937; amd. Sec. 1, Ch. 146, L. 1941; amd. Sec. 1, Ch. 12, L. 1949; amd. Sec. 1, Ch. 174, L. 1953; amd. Sec. 1, Ch. 7, L. 1955; earlier acts were secs. 3189 to 3193, and secs. 3199 to 3202.6, R. C. M. 1935.

#### **Amendment**

The 1955 amendment in subds. (8), (9) and (20) substituted "Montana state

board of pharmacy" for "secretary of the state board of health."

#### **Collateral References**

Liability of seller or manufacturer of drugs for injuries as affected by buyer's or user's allergy or unusual susceptibility to injury from article. 26 ALR 2d 978.

Entrapment to commit offense with respect to narcotics law. 33 ALR 2d 883.

**54-103. Manufacturers and wholesalers.** No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Montana state board of pharmacy.



**History:** En. Sec. 3, Ch. 176, L. 1937; tana state board of pharmacy" for "secretary of the state board of health."  
amd. Sec. 2, Ch. 7, L. 1955.

**Amendment**

The 1955 amendment substituted "Mon-

**54-104. Qualification for licenses.** No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to the Montana state board of pharmacy:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five (5) years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict. The Montana state board of pharmacy may suspend or revoke any license for cause.

**History:** En. Sec. 4, Ch. 176, L. 1937; tana state board of pharmacy" for "secretary of the state board of health."  
amd. Sec. 3, Ch. 7, L. 1955.

**Amendment**

The 1955 amendment substituted "Mon-

**54-106. Sales by apothecaries.** (1) An apothecary, in good faith, may dispense and sell narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two (2) years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. The prescription shall not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per cent (20%) of the complete solution to be used for medical purposes.

(4) Whenever any narcotic drug is permitted to be sold without a written order under the federal law and regulations, it shall be deemed a compliance with the subsection if the apothecary dispenses and sells

narcotic drugs upon a prescription given orally by a physician, dentist or veterinarian, if in so doing the federal law and regulations relating to the dispensing and sale of narcotic drugs when prescribed orally are complied with by all parties to the transaction.

**History:** En. Sec. 6, Ch. 176, L. 1937;      **Amendment**  
amd. Sec. 4, Ch. 7, L. 1955.

The 1955 amendment added subd. (4).

**54-109. Record to be kept.** (1) Physicians, Dentists, Veterinarians, and Other Authorized Persons. Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Provided: That no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight (48) consecutive hours, (a) four (4) grains of opium, or (b) one-half ( $\frac{1}{2}$ ) of a grain of morphine or any of its salts, or (c) two (2) grains of codeine or of any of its salts, or (d) one-fourth ( $\frac{1}{4}$ ) of a grain of heroin or of any of its salts, or (e) one (1) grain of extract of cannabis or one (1) grain of any more potent derivative or preparation of cannabis, or (f) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) Manufacturers and Wholesalers. Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

(3) Apothecaries. Apothecaries shall keep records of all narcotic drugs received and disposed of by them in accordance with the provisions of subsection 5 of this section.

(4) Vendors of Exempted Preparations. Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 54-108, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection 5 of this section.

(5) Form and Preservation of Records. The form of records shall be prescribed by the Montana state board of pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs

produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced; and the proportion of resin contained in or producible from the dried flowering or fruiting tops of the pistillate plant *Cannabis Sativa* L., from which the resin has not been extracted, received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two (2) years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft.

**History:** En. Sec. 9, Ch. 176, L. 1937; stituted "Montana State Board of Pharmacy" for "secretary of the state board of health."  
 amd. Sec. 5, Ch. 7, L. 1955.

#### Amendment

The 1955 amendment in subd. (5) sub-

**54-119. Narcotic drugs to be delivered to state, official, etc.** All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(b) Upon written application by the Montana state board of pharmacy, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said Montana state board of pharmacy for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this state, not operated for private gain, the Montana state board of pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The Montana state board of pharmacy may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics, or may destroy the same.

(d) The Montana state board of pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing



the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws.

**History:** En. Sec. 19, Ch. 176, L. 1937; tana state board of pharmacy" for "secretary of the state board of health" and in  
amd. Sec. 6, Ch. 7, L. 1955. subd. (c) substituted "its" for "his."

**Amendment**

The 1955 amendment substituted "Mon-

**54-124. Enforcement and cooperation.** It is hereby made the duty of the Montana state board of pharmacy, its officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this act, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs.

**History:** En. Sec. 24, Ch. 176, L. 1937; all acts and parts of acts in conflict there-  
amd. Sec. 7, Ch. 7, L. 1955. with.

**Amendment**

The 1955 amendment substituted "Montana state board of pharmacy" for "secretary of the state board of health."

**Effective Date**

Section 8 of Ch. 7, Laws 1955 provided the act should be in effect upon its passage and approval. Approved February 1, 1955.

**Repealing Clause**

Section 9 of Ch. 7, Laws 1955 repealed

**54-125. Penalties.** Any person violating any provision of this act shall upon conviction be punished, for the first offense, by imprisonment in the state prison for not less than one (1), nor more than five (5) years. Upon a subsequent conviction for violation of any provision of this act, the penalty shall hereby be imprisonment in the state prison for not less than five (5), nor more than twenty (20) years. Any person who sells, barter, exchanges, distributes, gives away, or in any manner disposes of any of the drugs in violation of the provisions of this act, to any person of the age of eighteen (18) years, or under, shall upon conviction be punished by imprisonment in the state prison for not less than five (5) years nor more than life.

**History:** En. Sec. 25, Ch. 176, L. 1937; term of 1 to 5 years. For a subsequent  
amd. Sec. 1, Ch. 6, L. 1959. conviction, the penalty, was increased from a fine not exceeding \$5,000 and/or imprisonment not exceeding 5 years to the term of from 5 to 20 years.

**Amendment**

The 1959 amendment increased the penalty for a first conviction from a fine, of not exceeding \$1,000 and/or imprisonment for not exceeding 6 months to the present

CHAPTER 2—NARCOTIC EDUCATION SECTION OF THE  
STATE BOARD OF HEALTH

**54-206 to 54-209. Repealed.**

**Repeal**

These sections (Secs. 1 to 4, Ch. 104, L. 1949), relating to the narcotic education section of the division of public health

education in the state board of health, were repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

















# REVISED CODES OF MONTANA

## VOLUME 4 1959 Cumulative Pocket Supplement

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 4 OF THE  
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 4  
THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

*Edited by*

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

*Editorial Supervisor*

WESLEY W. WERTZ

**THE ALLEN SMITH COMPANY**

Publishers

Indianapolis, Indiana



COPYRIGHT 1959

*by*

THE ALLEN SMITH COMPANY

## NEW LAWS IN VOLUME 4

For index see pocket supplement to Replacement Volume 9

### ENACTED IN 1955

Coal utilization experiment project, establishment, 75-732 to 75-734.  
Discrimination in public places prohibited, 64-211.  
Education classes for mentally and physically handicapped children, 75-5001 to 75-5007.  
Encumbrance of funds or claims not paid at end of fiscal year, 59-701.1, 59-701.2.  
Geophysical exploration, regulation, 69-3301 to 69-3308.  
Per diem allowance of expenses of state personnel, 59-537 to 59-542.  
Persons subject to epileptic type seizures, reports on, 69-127.  
Public Auction Law, 66-220 to 66-230.  
Services to the blind, 71-1401 to 71-1415.  
Social security coverage, 59-1102.1, 59-1103.1.  
Social security coverage for teachers, 59-1109 to 59-1113.  
State board of health,  
Laboratory services, 69-105.4.  
Maternal and child health services, 69-3201 to 69-3205.  
Underground gas storage reservoirs, 60-801 to 60-805.  
Water Pollution Act, 69-1326 to 69-1341.

### ENACTED IN 1957

Budget committee for certain state institutions, 75-312.  
County leases of reserved interest after sale of tax deed lands, 60-704.  
Elementary school supervisor, 75-1320.  
Engineers and land surveyors, regulation, 66-2324 to 66-2347.  
Equipment on railroad track motor cars, 72-668 to 72-670.  
Federal aid to education, 75-5101, 75-5102.  
Liability of parents for property destroyed by children, 61-112.1, 61-112.2.  
Merchants, right to request individuals to keep merchandise in full view, 64-212, 64-213.  
Petroleum field station, transfer to oil and gas conservation commission, 60-146 to 60-148.  
Uniform Adoption Act, 61-201 to 61-217.  
Uniform Gifts to Minors Act, 67-1801 to 67-1811.

### ENACTED IN 1959

Compulsory retirement of public employee, 68-802.  
Discrimination among ocular practitioners by public agencies prohibited, 66-1317.  
Emergency authorizations to teach, 75-2522.  
Law Enforcement Academy Act, 75-5201 to 75-5208.  
Motorboat and vessel regulation, 69-3501 to 69-3518.  
Pension trusts, validity, 67-423, 67-424.  
Principal and Income Act, 67-1901 to 67-1916.  
Retail Installment Sales Act, 74-601 to 74-612.  
Sanitarians, 69-3401 to 69-3409.  
State plumbing code, 66-2412 to 66-2426.  
Television VHF booster and translator systems, 70-401 to 70-407.  
Tuberculosis control, 69-304 to 69-319.  
Uniform Facsimile Signature of Public Officials Act, 59-1301 to 59-1306.  
Western Montana Branch Experiment Station, change of name, authority to receive donations, 75-710.1 to 75-710.4.

## AMENDMENTS IN VOLUME 4

Accumulation of income, 67-413.  
Adoption, 61-130.  
Architects, regulation of, 66-103, 66-106, 66-107, 66-112, 66-114.



## AMENDMENTS IN VOLUME 4 (Continued)

Auctioneers and auction sales, 66-229.  
Barbers, regulation, 66-403, 66-408, 66-411.  
Boiler inspection—engineer's license, 69-1512, 69-1516.  
Chiropractics, 66-505.  
Cosmetology regulation, 66-801, 66-802, 66-815, 66-817.  
County boards of health, 69-701.  
County poor, 71-101, 71-118.  
Dental health, 69-401, 69-403, 69-404.  
Fire escapes and apparatus, 69-1807.  
Fireworks regulation, 69-2701, 69-2702, 69-2704, 69-2706.  
Fiscal year, 59-701.  
Homes for the aged, 69-2401.  
Hospital Survey and Construction Act, 69-3002 to 69-3004, 69-3006, 69-3007, 69-3009, 69-3010, 69-3012, 69-3015, 69-3016, 69-3018.  
Industrial hygiene, 69-201.  
Medicine, regulation, 66-1003.  
Nepotism, 59-519.  
Office hours of public employees, 59-510.  
Oil and gas, conservation commission, 60-125, 60-144, 60-145.  
Optometry, 66-1301, 66-1302, 66-1305, 66-1307, 66-1311, 66-1316.  
Parks, 62-102.  
Petroleum products dealers' licenses, 60-201, 60-202.  
Pharmacy regulation, 66-1507, 66-1508.  
Plumbers, 66-2403.  
Power of alienation of property, suspension, 67-406, 67-407.  
Public accountants, 66-1806.  
Public Employees Retirement Act, 68-102, 68-202, 68-203, 68-501, 68-701, 68-801, 68-901, 68-1001 to 68-1003, 68-1101, 68-1303.  
Public officers and employees,  
    Expenses, 59-538.  
    Reports, 59-703, 59-704.  
Public Welfare Act, 71-202, 71-210, 71-230, 71-308, 71-401, 71-405, 71-410, 71-501, 71-502, 71-508, 71-509, 71-601, 71-607, 71-611, 71-706, 71-707, 71-710, 71-1201, 71-1206, 71-1207.  
Railroads, 72-150, 72-164.  
Real estate brokers, regulation, 66-1903, 66-1910, 66-1916, 66-1917.  
Recording, 73-104.  
Refrigerated lockers, 69-2802 to 69-2805, 69-2807, 69-2808, 69-2810, 69-2813.  
Schools,  
    Adult education, 75-1633.  
    Bonds, 75-3912, 75-3913, 75-3919, 75-3938, 75-3942.  
    Budget system, 75-1716.  
    Census, 75-1523, 75-1904.  
    Colleges, acceptance of public lands, 75-1006.  
    Compulsory attendance, 75-2901, 75-2902.  
    Correspondence school, 75-2006.  
    County high schools, 75-4230, 75-4231.  
    County superintendent, 75-1522.  
    Districts, 75-1805, 75-1831.  
    Erection of residence halls as state educational institutions, 75-201 to 75-206.  
    Fire drills, 75-2301.  
    Handicapped children, 75-5003.  
    High school districts, 75-4601, 75-4602.  
    High schools, 75-4101, 75-4103, 75-4116.  
    Holidays, 75-2204.  
    School busses, 75-3308, 75-3310.  
    School trustees, 75-1630, 75-1632, 75-1632.1, 75-1637.  
    State board of education, 75-104, 75-107.  
    State support, 75-3612, 75-3618.  
    Superintendent of public instruction, 75-1303.  
    Taxes, 75-3804.  
    Teachers, 75-2401.  
    Teachers' certificates, 75-2516, 75-2518, 75-2520.  
    Teachers' retirement system, 75-2701, 75-2707, 75-2709, 25-2712.  
    Transportation of pupils, 75-3403, 75-3407, 75-3412.

## AMENDMENTS IN VOLUME 4 (Continued)

Social security coverage, 59-1101 to 59-1108.

State board of health, 69-105.

State epidemiologist, 69-901.

State parks, 62-304.

Stock-brokers and securities, regulation, 66-2002, 66-2003, 66-2007, 66-2018, 66-2023, 66-2024.

Tuberculosis control, 69-301.

Venereal disease control, 69-1101, 69-1102.

Veterinary medicine, 66-2201 to 66-2204, 66-2207 to 66-2212.

Vital statistics, 69-502, 69-506, 69-519.

Water Pollution Act, 69-1328.



# MONTANA REVISED CODES

---

## TITLE 57—NUISANCES

### CHAPTER 1—NUISANCES PUBLIC AND PRIVATE—REMEDIES

#### 57-101. (8642) Nuisance defined.

##### References

Cited and applied in *McCollum v. Kolokotrones*, 131 M 438, 311 P 2d 780, 782.

#### 57-102. (8643) Public nuisance.

##### Chicken Raising Business

Chicken raising business was not a public nuisance. *McCollum v. Kolokotrones*, 131 M 438, 311 P 2d 780, 782.

#### 57-110. (8651) Action for public nuisance, when private person, etc.

##### Chicken Raising Business

Where defendants kept their property clean and conducted the chicken raising enterprise in a reasonable and proper manner; none of the structures or the chickens, nor the manner of use thereof, had damaged the plaintiff or the neighborhood, and the structures did not constitute a fire hazard, there was no existence of a nuisance or damages resulting therefrom. *McCollum v. Kolokotrones*, 131 M 438, 311 P 2d 780, 783.

##### Special Damage

Where owner of tourist camp sought to have chicken raising business on nearby property declared a public nuisance and abated, it was incumbent upon the plaintiff to prove special damage, in other words, damage distinct from that unto the public at large. *McCollum v. Kolokotrones*, 131 M 438, 311 P 2d 780, 783.



## TITLE 58—OBLIGATIONS

### CHAPTER 2—JOINT AND SEVERAL, CONDITIONAL AND ALTERNATE OBLIGATIONS

#### 58-209. (7405) Performance, etc., of conditions—when essential.

##### References

Cited or applied in *White v. Saby*, 127 M 241, 260 P 2d 1116, 1119.

#### 58-212. (7408) Conditions involving forfeiture—how construed.

##### Operation and Effect

Under a lease contract wherein it was agreed that the lessee would not assign the lease without the consent of the lessor, and further that the sale of more than 50% of the stock would be considered an assignment, it was held there was not a violation of the lease where the facts showed that the lessor had consented to the sale of stock in one instance, and

further that such stock was then pledged as security for a loan, which security was then surrendered for the payment of the loan. Such surrender was by operation of law and provisions restraining the assignment of a lease includes only voluntary assignments and is not operative against an assignment effected by law. *Lipsker v. Billings Boot Shop*, 129 M 420, 288 P 2d 660.

### CHAPTER 6—OBLIGATIONS IMPOSED BY LAW

#### 58-605. (7577) Restoration of thing wrongfully acquired.

##### Operation and Effect

Restitution should be granted when to do otherwise would give offense to equity and good conscience, so, where plaintiff's attorneys had knowledge that there was some question as to whether the named defendant was the proper party defendant

prior to the entry of a default judgment, which was later set aside, defendant was entitled to restitution of money seized under the default judgment. *Waggoner v. Glacier Colony of Hutterites*, 131 M 525, 312 P 2d 117, 119.

## TITLE 59—OFFICES AND OFFICERS

- Chapter 5. Prohibitions and general provisions applicable to public officers, 59-510, 59-519, 59-537 to 59-542.
7. The fiscal year—official reports, 59-701 to 59-701.2, 59-703, 59-704.
11. Federal social security act—coverage of certain officers and employees, 59-1101 to 59-1113.
13. Facsimile signatures of public officials, 59-1301 to 59-1306.

## CHAPTER 3—DISQUALIFICATIONS AND RESTRICTIONS

59-303. (412) County officers not to act as deputies of other officers, etc.

### References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

## CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

- Section 59-510. Office hours.
- 59-519. Appointment of relative to office of trust or emolument unlawful.
- 59-537. Definitions.
- 59-538. Expenses of persons in state service—per diem allowance.
- 59-539. Computation of per diem allowance.
- 59-540. Schedule of expenses—form.
- 59-541. Schedule of expenses to be filed.
- 59-542. Existing laws relating to counties and municipalities not changed.

**59-510. (453) Office hours.** Unless otherwise provided by law every officer must keep his office open for the transaction of business continuously from eight o'clock A. M., until five o'clock P. M. each day, except upon Saturdays and holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, excepting the state treasurer, who in his discretion may in the interest of the safekeeping of funds, securities and records under his control, close his office during the period from twelve o'clock noon to one o'clock P. M. every day.

**History:** En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1931; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957. Cal. Pol. C. Sec. 1030.

### Amendment

The 1957 amendment in the first sentence substituted "eight o'clock" for "nine o'clock" and "except upon Saturdays and holidays" for "except upon Saturdays when the office hours shall be from nine o'clock a.m. to twelve o'clock noon" and in the second sentence deleted the words "excepting upon holidays" which appeared between the words "requires," and "excepting."

### Repealing Clause

Section 2 of Ch. 253, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### Effective Date

Section 3 of Ch. 253, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 16, 1957.

### References

Cited or applied in *Fey v. A A Oil Corp.*, 126 M 552, 255 P 2d 339, 341.

**59-519. (456.2) Appointment of relative to office of trust or emolument unlawful.** It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree, or by affinity within the second degree; except that the provisions of this section shall not apply to sheriffs in the appointment of females as cooks and/or matrons. It shall further be unlawful for any person or any member of any board, bureau or commission, or employee of any department of this state, or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree, or by affinity within the second degree.

**History:** En. Sec. 2, Ch. 12, L. 1933; amd. Sec. 1, Ch. 94, L. 1955.

all acts and parts of acts in conflict therewith.

**Amendment**

The 1955 amendment added the exception clause to the first sentence.

**Repealing Clause**

Section 2 of Ch. 94, Laws 1955 repealed

**Effective Date**

Section 3 of Ch. 94, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

**59-521 to 59-523. (457 to 459) Repealed.**

**Repeal**

These sections (Secs. 1 to 3, p. 102, L. 1897), relating to traveling expenses of state officers, were repealed by Sec. 7,

Ch. 66, Laws 1955. For present provisions, see secs. 59-537 to 59-542.

**59-524 to 59-529. (459.1 to 459.6) Repealed.**

**Repeal**

These sections (Secs. 1 to 6, Ch. 108, L. 1925; amd. Sec. 1, Ch. 40, L. 1933; amd. Sec. 1, Ch. 32, Ex. L. 1933; amd. Sec. 1, Ch. 92, L. 1941; amd. Sec. 1, Ch. 139, L. 1943; amd. Sec. 1, Ch. 17, L.

1949; amd. Sec. 1, Ch. 7, L. 1951; amd. Sec. 1, Ch. 64, L. 1953), relating to expenses of persons in state service, were repealed by Sec. 7, Ch. 66, Laws 1955. For present provisions, see secs. 59-537 to 59-542.

**59-537. Definitions. When used in this act:**

(a) The term "subsistence" means lodging, meals and other necessary expenses incidental to the personal sustenance or comfort of the traveler, including fees or tips to porters and stewards.

(b) The term "per diem allowance" means a daily flat rate of payment in lieu of actual expenses.

**History:** En. Sec. 1, Ch. 66, L. 1955.

**Title of Act**

An act to provide a per diem allowance in lieu of actual expenses for subsistence for persons engaged in traveling under any state department; providing for the computation of such per diem allowance

on a quarterly basis; requiring said persons to submit periodic schedules of expenses to the board of examiners; providing for the filing of such schedules of expenses and repealing sections 59-521 to 59-529, inclusive, Revised Codes of Montana, 1947, as amended by chapter 64 of the 1953 legislative assembly.

**59-538. Expenses of persons in state service—per diem allowance.** Every person engaged in any service in every department of state, inclusive of persons in appointive positions or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, in lieu of the actual expenses for subsistence, a per diem allowance at the rate of seven dollars (\$7.00) per day for such travel within the state of Montana and at the rate of ten dollars (\$10.00) per day for such travel outside the state of Montana; provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, Revised Codes of Montana, 1947; or section 93-313, Revised Codes of Montana, 1947; provided that nothing herein contained shall be construed as affecting the validity of section 43-310, Revised Codes of Montana, 1947; and provided further that the provisions of this act shall not apply to the elective state public officers of the state of Montana who shall in lieu thereof be authorized actual and necessary expenses while engaged in state service away from Helena, not to exceed fifteen dollars (\$15.00) per day.

**History:** En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957.

**Effective Date**

Section 2 of Ch. 207, Laws 1957 provided the act should be in full force and effect immediately upon approval. Approved March 9, 1957.

**Amendment**

The 1957 amendment deleted the words "and" and "further" from the second proviso clause and added the "and provided further" clause.

**59-539. Computation of per diem allowance.** In computing the per diem in lieu of subsistence for continuous travel of more than twenty-four (24) hours, the calendar day, midnight to midnight, shall be the unit, and for fractional parts of a day at the commencement or ending of such continuous travel, constituting a travel period, one-fourth ( $\frac{1}{4}$ ) of the rate for a calendar day shall be allowed for each period of six (6) hours or fraction thereof. When a change in the per diem rate is made during a day, the rate of per diem in effect at the beginning of the quarter in which the change occurs shall continue to the end of such quarter. For continuous travel of twenty-four (24) hours or less, constituting a travel period, such period shall be regarded as commencing with the beginning of the travel and ending with the completion thereof, and for each six (6) hour portion of the period or fraction thereof one-fourth ( $\frac{1}{4}$ ) of the rate for a calendar day shall be allowed; provided, however, that no per diem, excepting an allowance not to exceed one dollar and twenty-five cents (\$1.25) per day for moneys actually expended for mid-day meals, shall be allowed when the departure is at or after 8:00 A. M. and the return on the same day is at or prior to 6:00 P. M. In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding three (3) hours.

**History:** En. Sec. 3, Ch. 66, L. 1955.



**59-540. Schedule of expenses—form.** Every such person so engaged shall render to the board of examiners periodically, as prescribed by said board, a schedule of expenses and amounts claimed for said period, in a form to be prescribed by said board. Said schedule shall show in what capacity such person was engaged each day while away from the department in which said daily duties arose, and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage and other such items.

**History:** En. Sec. 4, Ch. 66, L. 1955.

**59-541. Schedule of expenses to be filed.** Said board of examiners shall keep a separate file for each person engaged in this act contemplated, and file schedules of expenses from each said person therein. Said schedules shall be distinct and separate from other reports and detail that may be required to be made to the departments wherein such persons are respectively employed.

**History:** En. Sec. 5, Ch. 66, L. 1955.

**59-542. Existing laws relating to counties and municipalities not changed.** This act shall not be construed to change in any manner the existing laws of the state pertaining to the conduct of any county, city or municipal office.

**History:** En. Sec. 6, Ch. 66, L. 1955.

#### **Repealing Clause**

Section 7 of Ch. 66, Laws 1955 read  
"Sections 59-521 to 59-529, inclusive, Re-

vised Codes of Montana, 1947, as amended by chapter 64 of the 1953 Legislative Assembly, and all other acts and parts of other acts in conflict herewith are hereby repealed."

### **CHAPTER 6—RESIGNATIONS AND VACANCIES**

#### **59-602. (511) Vacancies, how they occur.**

##### **References**

Cited or applied in State ex rel. Koch  
v. Lexcen, 131 M 161, 308 P 2d 974, 975.

### **CHAPTER 7—THE FISCAL YEAR—OFFICIAL REPORTS**

#### **Section 59-701. Fiscal year.**

59-701.1. Re-appropriation and re-encumbrance of purchase orders encumbered at end of each fiscal year.

59-701.2. Claims not paid by time fiscal reports closed out are carried over.

59-703. Printing official reports—limitation.

59-704. Distribution of public reports.

**59-701. (518) Fiscal year.** The fiscal year for state purposes commences on the first (1st) day of July of each year, and ends on the last day of June of each year. The fiscal year for county purposes commences on the first (1st) day of July of each year and ends on the last day of June of each year. At the close of each fiscal year each state office, department, bureau, commission, institution, university unit, and agency shall make a determination of its financial condition and the results of its operations for such fiscal year, and the fiscal records of such state office, department, bureau, commission, institution, university unit, or agency for such fiscal year shall be closed out not more

than twenty (20) days following the close of each fiscal year, and the trial balances of the accounts of such state office, department, bureau, commission, institution, university unit, and agency shall be transmitted to the state controller so as to be received by him not more than thirty (30) days following the close of each fiscal year.

**History:** En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R. C. M. 1921; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec. 1, Ch. 84, L. 1955.

**Amendment**

The 1955 amendment substituted "twenty (20)" for "thirty (30)" and "thirty (30)" for "forty-five (45)."

**59-701.1. Re-appropriation and re-encumbrance of purchase orders encumbered at end of each fiscal year.** Accounting control of all purchase orders issued by the state controller which are encumbered at the end of each fiscal year in the state controller's accounts, because of incompleteness of the contract, shall be re-appropriated and re-encumbered in the succeeding fiscal year.

**History:** En. Sec. 2, Ch. 84, L. 1955.

**59-701.2. Claims not paid by time fiscal reports closed out are carried over.** Any just claims not paid within the above twenty (20) days shall become payable from the succeeding year's appropriation, providing, however, that such claims shall not exceed the appropriation made for the preceding biennium.

**History:** En. Sec. 3, Ch. 84, L. 1955.

all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 4 of Ch. 84, Laws 1955 repealed

**59-703. (520) Printing official reports—limitation.** The head of any state office, board, bureau, commission or department, who under the statutes of the state is required to make an annual or biennial report of his office, board, bureau, commission or department, may make application to the state board of examiners for permission to have such report printed and published, and the said board shall have full power to grant or deny such application.

No report of any state office, board, bureau, commission or department subsequent to the reports for the two year period terminating June 30, 1936, shall be printed and published until the same has been submitted to the state board of examiners and the printing authorized. The said board shall authorize the printing and publication of such reports only when it deems the usefulness of the reports in the administration of the government of the state to justify the expense.

The state board of examiners may in its discretion demand that the annual or biennial report of the head of any office, board, bureau, commission or department shall be printed and published without receiving any request from the officer concerned.

Such reports shall be confined to a factual presentation to the governor and legislature of the activities of the department concerned and shall be 8½ x 11 inches in outside dimension and shall employ single color covers only.

**History:** En. Sec. 1, p. 94, L. 1899; re-en. Sec. 444, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1921; re-en. Sec. 520, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1933; repealed and new section enacted, Sec. 1, Ch. 33, L. 1937; amd. Sec. 1, Ch. 98, L. 1957.

#### Amendment

The 1957 amendment added the fourth paragraph.

#### Repealing Clause

Section 2 of Ch. 98, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**59-704. (521) Distribution of public reports.** The reports shall be distributed by the department responsible for making the report. Such distribution shall be within the discretion of the head of the department making the report, but the following distribution shall be mandatory:

To the governor—as many as he desires, but not less than twenty-five (25) copies of each report.

To the secretary of state—twenty-five (25) copies of each report.

To the librarian of the state historical library—forty (40) copies of printed reports and a minimum of four (4) copies of mimeographed or carbon reports.

The historical society of Montana shall distribute publications so received to the public libraries, and other educational, scientific, library or art institutions of the state, which may apply to be put on the mailing list for all or a portion of the state publications; and to such libraries and other institutions outside this state with which the historical society of Montana may have established exchange relations.

The historical society of Montana shall transmit to the United States Library of Congress, two (2) copies of every administrative report or study.

To the legislative assembly of the state of Montana—one (1) copy for each member.

**History:** Ap. p. Sec. 313, Pol. C. 1895; amd. Sec. 1, Ch. 12, L. 1907; Sec. 445, Rev. C. 1907; re-en. Sec. 521, R. C. M. 1921; amd. Sec. 4, Ch. 46, L. 1937; amd. Sec. 1, Ch. 64, L. 1957; amd. Sec. 1, Ch. 85, L. 1959.

#### Amendments

The 1957 amendment completely revised this section. For section prior to amendment see parent volume.

The 1959 amendment substituted the present provisions relating to copies to the

state historical library and the subsequent distribution by the historical society for two provisions which read as follows: "To the librarian of the state historical society—four (4) copies. To the library of Congress—four (4) copies of each report."

#### Repealing Clause

Section 2 of Ch. 85, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

**Section 59-1101.** Declaration of policy.

59-1102. Definitions.

59-1102.1. Referendum and certification.

59-1103. Federal-state agreement.

59-1103.1. Contributions by state employees.

59-1104. Plans for coverage of employees of political subdivisions.

59-1105. Contribution fund.

59-1106. Costs of administration.

59-1107. Rules and regulations.

59-1108. Persons excepted from act.

59-1109. Supplementation of social security benefits.



- 59-1110. Eligibility of staff and teachers—payroll deductions.
- 59-1111. For purposes of act, each state institution of higher education deemed to have a separate retirement system—referendum—administration.
- 59-1112. Social security coverage not to prejudice other rights under other laws.
- 59-1113. General repeal—purpose.

**59-1101. Declaration of policy.** In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors' insurance system embodied in the social security act, it is hereby declared to be the policy of the legislature, subject to the limitations of this act, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the social security act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this act is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

**History:** En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955.

#### **Amendment**

The 1955 amendment substituted the words "In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana" for the

words "In order to extend to employees of political subdivisions of the state"; substituted "the state and its political subdivisions" for "the political subdivisions of the state" and added the second sentence.

#### **Collateral References**

48 Am. Jur. 520, Social Security Unemployment Insurance and Retirement Funds, §§ 9 et seq.

**59-1102. Definitions.** For the purposes of this act—

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal insurance contributions act, would not constitute "wages" within the meaning of that act;

(b) The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this act would constitute "employment" as defined in the social security act; or, (2) service which under the social security act may not be included in an agreement between the state and the secretary of health, education and welfare entered into under this act. Service performed by civilian employees of national guard units is specifically included within the term "employment." Service which under the social security act may be included in an agreement only upon certi-



fication by the governor in accordance with section 218(d)(3) of that act shall be included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the secretary of health, education, and welfare pursuant to section 3(b) [59-1102.1(b)] of this act;

(c) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision thereof;

(d) The term "state agency" means the board of administration of the public employees' retirement system of the state of Montana;

(e) The term "secretary of health, education, and welfare" means the secretary of the United States department of health, education, and welfare and includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the social security act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator had delegated any such function;

(f) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations thereof, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision. The term shall include special districts or authorities created by the legislature or local governments such as but not limited to school districts, housing authorities, etc.;

(g) The term "Social Security Act" means the act of Congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended; and

(h) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such Code of 1939 and section 3101 of such Code of 1954, and as such codes may from time to time be amended.

**History:** En. Sec. 2, Ch. 44, L. 1953; and additions. For section prior to amd. Sec. 2, Ch. 270, L. 1955. amendment see parent volume.

#### **Amendment**

The 1955 amendment substituted "secretary of health, education and welfare" for "federal security administrator" each time it appears and made other changes

#### **Collateral References**

Right to unemployment compensation of retired employee receiving pension or the like. 32 ALR 2d 901.

**59-1102.1. Referendum and certification.** (a) Pursuant to section 218 (d)(6) of the social security act, the public employees' retirement system of the state of Montana shall, for the purposes of this act, be deemed to

constitute a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby. With respect to employees of the state the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision; and in either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this act. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act.

(b) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health, education, and welfare.

**History:** En. Sec. 3, Ch. 270, L. 1955.

#### **Compiler's Note**

Section 3 of Ch. 270, Laws 1955 contained a preliminary clause which read "That chapter 44 of the Session Laws of Montana, 1953, be, and the same is hereby amended by adding thereto a new section providing for an election among members of the public employees' retirement system on the question of coverage under the social security act, said new section to be designated as section 3 and to read as follows:"

#### **Title of Act**

An act to amend chapter 44 of the Session Laws of Montana, 1953, relating to the coverage of certain officers and employees of the political subdivisions of the state of Montana under the old age and survivors' insurance provisions of Title II of the Federal Social Security

Act, as amended, by extending to employees of the state of Montana and its political subdivisions, including employees who are members of the public employees' retirement system and civilian employees of national guard units, the basic protection accorded to others by the old age and survivors' insurance system embodied in the social security act; providing for an election among members of the public employees' retirement system on the question of coverage; providing for the payment of contributions by both employees and the state and its political subdivisions; designating the board of administration of the public employees' retirement system as the state agency to administer this act; providing that if any provisions hereof are held invalid the remainder of this act shall not be affected thereby; providing for the repeal of all acts or parts of acts inconsistent with the provisions of this act.

**59-1103. Federal-state agreement.** (a) The state agency, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the secretary of health, education, and welfare, consistent with the terms and provisions of this act, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in section 2 [59-1102] of this act. Such agree-

ment may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health, education, and welfare shall agree upon, but, except as may be otherwise required or permitted by or under the social security act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of title II of the social security act;

(2) The state will pay to the secretary of the treasury of the United States, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in section 2 [59-1102] of this act), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into, except that such effective date may be made retroactive to the extent permitted by section 218(f) of the social security act, as defined herein;

(4) All services which constitute employment as defined in section 2 [59-1102] and are performed in the employ of the state by employees of the state, shall be covered by the agreement; and

(5) All services which (A) constitute employment as defined in section 2 [59-1102], (B) are performed in the employ of a political subdivision of the state, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under section 6 [59-1104] shall be covered by the agreement.

**History:** En. Sec. 3, Ch. 44, L. 1953; amd. Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959.

#### **Amendments**

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

The 1959 amendment substituted that part of subd. (3) beginning with the words "such effective date" for a clause reading "a modification entered into after December 31, 1954, and prior to January 1, 1958, may be effective with respect to services performed after December 31, 1954, or after a later date specified in such modification."

**59-1103.1. Contributions by state employees.** (a) Every employee of the state whose services are covered by an agreement entered into under section 4 [59-1103] shall be required to pay for the period of such coverage, into the contribution fund established by section 7 [59-1105], contributions, with respect to wages (as defined in section 2 [59-1102] of this act), equal to the amount of employee tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act. Such liability shall arise in considera-



tion of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

**History:** En. Sec. 5, Ch. 270, L. 1955.

**Compiler's Note**

Section 5 of Ch. 270, Laws 1955 contained a preliminary clause which read "That chapter 44 of the Session Laws of

Montana, 1953, be, and the same is hereby amended by adding thereto a new section providing for contributions with respect to wages by state employees, said new section to be designated as section 5 and to read as follows:"

**59-1104. Plans for coverage of employees of political subdivisions.**

(a) Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of title II of the social security act, in conformity with applicable provisions of such act, to employees of such political subdivision. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

(1) it is in conformity with the requirements of the social security act and with the agreement entered into under section 4 [59-1103];

(2) it provides that all services which constitute employment as defined in section 2 [59-1102] and are performed in the employ of the political subdivisions by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the social security act is applicable;

(3) it specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports;

(6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such



plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the social security act.

(b) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c)(1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in section 2 [59-1102] of this act), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 3 [59-1102.1].

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 2 [59-1102] of this act), not exceeding the amount of the employee tax which would be imposed by the federal insurance contributions' act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum (6%) per annum, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor, or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department, agency or fund of the state.

**History:** En. Sec. 4, Ch. 44, L. 1953; amd. Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959.

#### Amendments

The 1955 amendment in the first sentence of subd. (a) substituted the word "shall" for the words "is hereby authorized to"; in subd. (a) (2) inserted the words "except that it may exclude services performed by individuals to whom section 218 (d) (3) (C) of the social security act is applicable"; in subd. (a) (5)

substituted "secretary of health, education, and welfare" for "federal security administrator"; in subd. (c) (2) inserted the words "the employee" between the words "of" and "tax" and deleted the reference "section 1400 of" which appeared before the words "the federal insurance contributions act" and in subd. (d) raised the interest rate from 4 to 6 per centum.

The 1959 amendment in subd. (a) (2) changed the reference from "section 218 (d)(3)(C)" to "section 218(c)(3)(C)."

**59-1105. Contribution fund.** (a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund: (1) all contributions, interest, and penalties collected under sections 5 and 6 [59-1103.1 and 59-1104]; (2) all moneys appropriated thereto by the legislative assembly of the

state of Montana; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this act. Withdrawals from such fund shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 4 [59-1103]; (B) payment of refunds provided for in section 5(c) [59-1103.1] of this act; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 3 [59-1102.1] and the social security act.

(d) The treasurer of the state shall be ex-officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution fund.

**History:** En. Sec. 5, Ch. 44, L. 1953; amd. Sec. 7, Ch. 270, L. 1955.

"from"; in subd. (b) inserted the words "refunds provided for in section 5(c) of this act; and (C)" and added subd. (e).

#### **Amendment**

The 1955 amendment in subd. (a) (5) substituted the word "for" for the word

**59-1106. Costs of administration.** All costs allocable to the administration of this chapter shall be charged to and paid to the general fund by each department of the state and by the participating divisions and instrumentalities and political subdivisions of the state pro rata according to their respective contributions.

**History:** En. Sec. 6, Ch. 44, L. 1953; amd. Sec. 8, Ch. 270, L. 1955.

"by each department of the state and" and the words "and political subdivisions."

#### **Amendment**

The 1955 amendment inserted the words

**59-1107. Rules and regulations.** The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this act, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act.

**History:** En. Sec. 7, Ch. 44, L. 1953; amd. Sec. 9, Ch. 270, L. 1955.

**Amendment**

The 1955 amendment made no change in the text of this section.

**59-1108. Persons excepted from act.** This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firemen, policemen or highway patrolmen.

**History:** En. Sec. 8, Ch. 44, L. 1953; amd. Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959.

**Amendments**

The 1955 amendment reworded this section. Prior to amendment it read "This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state, and all employees of the political subdivisions thereof operating under the provisions of the public employees retirement act of the state of Montana, or under any retirement plan for firemen, policemen, teachers, or highway patrolmen."

The 1959 amendment eliminated "teachers" from the list of exceptions.

Section 4 of Ch. 97, Laws 1959 read "If any clause, sentence, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative, or unconstitutional, such decision shall not affect, impair, or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision, or part directly adjudged to be invalid, inoperative or unconstitutional."

**Repealing Clauses**

Section 12 of Ch. 270, Laws 1955 and Sec. 5 of Ch. 97, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 6 of Ch. 97, Laws 1959 provided the act shall be in effect from and after its passage and approval. Approved March 2, 1959.

**Cross-Reference**

Application to teachers and staff members in public schools and institutions of higher learning, secs. 59-1109 to 59-1113.

**59-1109. Supplementation of social security benefits.** Any school district of the state, may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum pursuant to section 218 of the Federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of such board of trustees. If the majority of votes cast in any such referendum indicates that said staff and teachers approve, then such board of trustees shall certify to the state board of equalization (or such other agency as may be by legislation designated to administer such program and enter into agreements for extensions of social security coverage) that the conditions for coverage by social security, required by section 218 of the social security act have been complied with.

**History:** En. Sec. 1, Ch. 271, L. 1955.

**Title of Act**

An act to provide for supplemental social security retirement benefits to

teachers and staff members upon approval of district boards of trustees for public schools, and of the state board of education for each state institution of higher education, and referendum votes; pro-



viding for separate coverage of each district, and of each institution of higher education, providing for application of the provision of chapter 44, Laws of 1953, where not in conflict herewith.

**59-1110. Eligibility of staff and teachers—payroll deductions.** Pursuant to such certification, the staff and teachers of any such district shall be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state board of equalization, or such other agency as may be designated by the legislature to administer social security act coverage in this state, and held in the contributions' fund as provided by chapter 44, Laws of Montana, 1953.

**History:** En. Sec. 2, Ch. 271, L. 1955.

**59-1111. For purposes of act, each state institution of higher education deemed to have a separate retirement system—referendum—administration.** (a) For the purposes of this section of this act, there shall be deemed to be a separate retirement system for the teachers of each state institution of higher education in Montana, and each such institution and the teachers therein shall be treated separately and independently from the other such institutions and teachers.

(b) On request of the president of any such institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requisites therefore prescribed by section 218 of the Federal Social Security Act.

(c) If the majority of votes cast in any such referendum indicates that the majority of voters desire it, then the governor shall certify to the federal secretary of health, education, and welfare that each of the conditions set forth in section 218 of the social security act has been complied with in respect to the retirement system voting in that referendum.

(d) Upon such certification the governor shall designate an official to enter into an agreement (or a modification or supplement to an existing agreement, or both such modification and supplement) with the appropriate officers of the federal government, pursuant to section 218 of the said social security act, to secure coverage thereunder for the retirement system with respect to which such certification has been made. Such agreements may be made retroactive to the extent permissible under the social security act.

(e) The fiscal officer for each institution for whose retirement system an agreement has been so made shall collect the contributions required by said section 218 as follows: (1) from the teachers in the retirement system of that institution, by payroll deductions and (2) for the state from any appropriations for salaries, or otherwise made available, to the institution involved. In the absence of specific provision in the appropriations for, or budget of, such an institution for such contributions, the state board of education shall designate the funds from which any such required



contributions shall be made and the budgetary items to which they shall be allocated.

(f) In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to such amended law or such superseding law.

**History:** En. Sec. 3, Ch. 271, L. 1955.

**59-1112. Social security coverage not to prejudice other rights under other laws.** Nothing in this act shall be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state; it being the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits, and to permit members of teaching or staff personnel in any district or institution of higher education so electing to become a member of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one such system, and no benefits received under either system shall be deducted from any other or separate system.

**History:** En. Sec. 4, Ch. 271, L. 1955.

**59-1113. General repeal—purpose.** All acts and parts of acts in conflict herewith are hereby repealed to the extent of any such conflict, it being the purpose of this act to bring under the provisions of chapter 44, Montana Session Laws of 1953, or any act amendatory thereof, teachers and staff members of districts and institutions of higher education for supplemental social security coverage as provided by the Federal Social Security Act.

**History:** En. Sec. 5, Ch. 271, L. 1955.

#### **Separability Clause**

Section 6 of Ch. 271, Laws 1955 read  
"If any provision of this act or the appli-

cation thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby."

### **CHAPTER 13—FACSIMILE SIGNATURES OF PUBLIC OFFICIALS**

- Section 59-1301. Definitions.  
59-1302. Facsimile signature.  
59-1303. Use of facsimile seal.  
59-1304. Violation and penalty.  
59-1305. Uniformity of interpretation.  
59-1306. Short title.

**59-1301. Definitions.** As used in this act: (a) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(b) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(c) "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(d) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

**History:** En. Sec. 1, Ch. 260, L. 1959.

Note.—Uniform State Law. Sections 59-1301 through 59-1306 constitute the "Uniform Facsimile Signatures of Public Officials Act" approved by the National Conference of Commissioners on Uniform State Laws, August 23, 1958.

#### **Title of Act**

An act to adopt the Uniform Facsimile Signatures of Public Officials Act; providing for the use of facsimile signatures and seals on public securities and instruments of payment issued by the state or any of its instrumentalities or political subdivisions; constituting a felony the use of such signatures or seals with intent to

defraud; and amending the following sections of the Revised Codes of Montana, 1947, to delete provisions inconsistent with this act: section 11-2231, respecting special improvement district bonds and warrants; section 11-2316, respecting municipal bonds; section 16-1620, respecting rural improvement district bonds and warrants; section 16-2033, respecting county bonds; section 75-3919, respecting school district bonds; section 75-3942, respecting school district funding bonds; section 79-1802, respecting state refunding bonds; section 89-1705, respecting irrigation district bonds; and section 89-2501, respecting drainage district bonds; containing a severability clause.

**59-1302. Facsimile signature.** Any authorized officer, after filing with the secretary of state or, in the case of officers of any city, town, county, school district or other political subdivision, with the clerk of such subdivision, his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed, but no such manual subscription shall be required as to interest coupons attached to such security; and

(b) Any instrument of payment.

Upon compliance with this act by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

**History:** En. Sec. 2, Ch. 260, L. 1959.

**59-1303. Use of facsimile seal.** When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

**History:** En. Sec. 3, Ch. 260, L. 1959.

**59-1304. Violation and penalty.** Any person who with intent to defraud uses on a public security or an instrument of payment:

(a) A facsimile signature, or any reproduction of it, of any authorized officer, or

(b) Any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is guilty of a felony.

**History:** En. Sec. 4, Ch. 260, L. 1959.

amended sections 11-2231, 11-2316, 16-1620, 16-2033, 75-3939, 75-3942, 79-1802, 89-1705 and 89-2501, respectively.

**Compiler's Note**

Sections 5 to 13 of Ch. 260, Laws 1959

**59-1305. Uniformity of interpretation.** This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** En. Sec. 14, Ch. 260, L. 1959.

**59-1306. Short title.** This act may be cited as the Uniform Facsimile Signatures of Public Officials Act.

**History:** En. Sec. 15, Ch. 260, L. 1959.

**Separability Clause**

Section 16 of Ch. 260, Laws 1959 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect with-

out the invalid provision or application, and to this end the provisions of this act are severable."

**Effective Date**

Section 17 of Ch. 260, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 13, 1959.

## TITLE 60—OIL AND GAS

- Chapter 1. Conservation of oil and gas—commission, 60-125, 60-144 to 60-148.
2. Petroleum products—standards—regulation of manufacture and distribution, 60-201, 60-202.
  7. Lease of land of local governmental units for development of oil and gas, 60-704.
  8. Underground gas storage reservoirs, 60-801 to 60-805.

### CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

- Section 60-125. Oil and gas conservation commission—members—term—oath—seal—employees.
- 60-144. Owners shall make available to commission cores and cuttings.
  - 60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation fund.
  - 60-146. Definitions.
  - 60-147. Transfer of jurisdiction and record.
  - 60-148. Availability of facilities to bureau.

**60-125. Oil and gas conservation commission—members—term—oath—seal—employees.** A. There is hereby created the oil and gas conservation commission of the state of Montana.

B. The oil and gas conservation commission of the state of Montana shall be composed of five (5) persons to be appointed by the governor, with the concurrence of the state senate. That of the commissioners, two (2) and not more than two (2) will be appointed for a period of two (2) years, and they shall be from industry. One (1) nonindustry man shall be appointed for three (3) years and one for four (4) years and one (1) for five (5) years. At the expiration of the term of the two (2) industry men, the appointment of their successors shall be for four (4) and five (5) years respectively, after which all vacancies shall be filled for five (5) year terms. All appointed members of the commission shall be subject to removal by the governor for cause at any time. In case of a vacancy in the office of a member of the commission, an appointment shall be made to fill such vacancy in the manner prescribed by the Constitution of the state of Montana.

C. Persons appointed as members of the commission shall have been bona fide residents of the state of Montana for at least one (1) year before such appointment, and the two (2) industry members, shall have had at least three (3) years' experience in the production of oil or gas.

D. Each member appointed to the commission and each person appointed to office by the said commission before entering upon the duties of his office shall take and subscribe to the oath specified in section 1, Article 19, of the Constitution of the state of Montana and such oaths shall be filed in the office of the secretary of state.

E. The commission shall have a seal with the words engraved thereon: "Oil and Gas Conservation Commission of Montana," and such seal shall be affixed to all writs, authentication of records or other official proceedings of the commission. The courts of this state take judicial notice of such seal.



F. The commission shall appoint an executive secretary and may employ such other persons as experts, geologists, petroleum engineers, attorneys, assistants, field supervisors, clerks and stenographers and may acquire such personal property as may be necessary to perform the duties that may be required of it, and fix the compensation of the executive secretary and employees. Each member of the commission shall receive, as compensation for his services, the sum of fifteen dollars (\$15.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with transportation and per diem expenses as provided by law in the discharge of said duties; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of section 60-145, plus any amount appropriated for that purpose, or otherwise accruing to said fund.

**History:** En. Sec. 2, Ch. 238, L. 1953; amd. Sec. 1, Ch. 11, L. 1955.

#### **Amendment**

The 1955 amendment in subd. F substituted the words "Each member of the commission shall receive, as compensation for his services, the sum of fifteen dollars (\$15.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with transportation and per diem expenses as provided by law in the discharge of said duties" for the words "The

members of the commission shall be allowed their transportation and per diem expenses as provided by law incurred in the discharge of their duties."

#### **Repealing Clause**

Section 2 of Ch. 11, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 11, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 5, 1955.

**60-144. Owners shall make available to commission cores and cuttings.** Any owner drilling a well for gas or oil shall make available to the commission at its field offices representative cores or chips, when available, and the cuttings from such well. Providing, however, that cores, chips or cuttings need not be so made available for a period of six (6) months following completion or abandonment of such wells. As pertains to the furnishing of cores, cuttings, or chips, the commission may, however, relieve the owner of any well of the obligation to furnish the same when in the opinion of the commission, the furnishing thereof would be unduly burdensome for such owner; provided, however, that such owner desiring relief must apply to and receive permission from the commission to not so furnish. The owner of any stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the commission's rules and regulations, shall within six (6) months from the date of the cessation of the drilling of such well, make available to the commission, complete sets of sample cuttings and representative cores or chips and well logs of such wells, which logs shall include among other information the size of casing used and the type and depth of water if any located, and such cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the commission until such time that the commission shall

desire to use the same; provided that the commission may not use such logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the date of their impounding by the commission has elapsed unless the owner of such stratigraphic test well consents to their use by the commission prior to the expiration of the three (3) year period. The commission, during the period of impoundment for any cores, cuttings, chips, or logs from any stratigraphic test well, shall not give any person access to said cores, chips, cuttings or logs, and it shall not disclose any information relating thereto or derived therefrom. The commission shall require, and the owner of any stratigraphic test well shall furnish, prior to the commencement of drilling of such well, a good and sufficient surety bond, to be approved prior to the commencement of such drilling, conditioned upon the proper plugging of such well prior to abandonment, the amount of the said bond to be determined by the estimated depth as in the commission's rules and regulations provided for oil and gas wells, and, prior to abandonment, such wells shall be plugged by the owner thereof, or by the surety should the said owner be in default, such plugging to conform to the standards set down and determined by the commission. The provisions of this section shall not apply to core holes or tests less than one thousand (1,000) feet in depth drilled primarily for structural information.

**History:** En. Sec. 21, Ch. 238, L. 1953; amd. Sec. 1, Ch. 224, L. 1955; amd. Sec. 1, Ch. 234, L. 1959.

#### Amendments

The 1955 amendment added to this section all that portion following the first sentence.

The 1959 amendment deleted the words "at the well" which followed the words "shall make available"; inserted the words "at its field offices representative"; inserted the words "or chips" the first time they appear; deleted the words "if and when required by regulation or order of the commission, and the commission shall cause such cores and cuttings to be delivered to the bureau of mines and geology of the state of Montana as the bureau may from time to time request" which appeared at the end of the first sentence. In the second sentence the amendment inserted the word "chips" and deleted the words "from exploratory or wildcat wells" which appeared after the word "cuttings." The amendment added the third sentence. In the fourth sentence the amendment substituted "the commission"

for "the bureau of mines and geology of the state of Montana at the well"; which appeared after the words "available to"; substituted "the commission until such time that the commission shall desire to use the same" for "the said bureau until such time as requested by the commission"; substituted "use" for "request" which appeared after the words "commission may not"; substituted "the commission" for "the bureau of mines and geology of the state of Montana" which appeared after the words "impounding by." In the fifth sentence the amendment substituted "the commission" for "the bureau of mines and geology of the state of Montana"; substituted "or" for "and" the first time it appears; deleted the words "the commission" which appeared after the words "shall not give" and inserted the word "it" between the words "and" and "shall."

#### Repealing Clauses

Section 2 of Ch. 224, Laws 1955, and Sec. 2 of Ch. 234, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation fund.** A. For the purpose of providing funds for defraying the expenses of the operation and enforcement of this act, and the expenses of said commission, the operators and producers of oil and gas shall be required to pay, and they will pay, the following schedule of assessments on each and every barrel of crude petroleum originally produced, saved and marketed or stored within the

state of Montana, or exported from the state of Montana, to-wit: (1) On leases on which wells are producing an average of twenty-five (25) barrels per day, or less, one-fourth of one cent ( $\frac{1}{4}\text{¢}$ ) per barrel; (2) On leases on which wells are producing an average of more than twenty-five (25) barrels per day, one-half of one cent ( $\frac{1}{2}\text{¢}$ ) per barrel; (3) And, on wells producing, saving and marketing, storing, or exporting natural gas, said operators and producers shall pay one (1) mill per ten thousand (10,000) cubic feet. Such payments shall be made during the time said commission is in existence. Producers thereof shall make such payment on each and every barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders and shall be reimbursed for such payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others as provided for in section 84-5409, Revised Codes of Montana, 1947.

For the purposes of this section, a "lease" shall mean that particularly described tract of land contained in a contract in writing, under seal, whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one particular unit agreement shall be considered as one lease relative to payments to be made under this section.

In addition to the above-mentioned privilege and license tax, any person, before commencing the drilling of any oil or gas well, shall secure from the commission a drilling permit and shall pay to the commission therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars (\$25.00); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars (\$75.00); seven thousand (7,000) feet and deeper, one hundred fifty dollars (\$150.00).

B. Each producer of crude petroleum in the state of Montana shall, not later than the last day of each of the calendar months of January, April, July and October, of each and every calendar year, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the commission, duly signed and sworn to, of all crude petroleum produced by him in this state during the preceding three (3) calendar months, and containing such other information as the commission may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in subsection A. of this section, above, for the period covered by such statement. Each producer of natural gas in the state of Montana shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in said subsection A. of this section, above, at such times and for such periods as may be prescribed by regulation of the commission. Any producer carrying on business at more than



one (1) place or location in this state may include all such places of business in one (1) statement.

C. Any such assessment not paid within the time herein specified shall be delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon request of the commission it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

D. All money collected under the provisions of this act shall be deposited in a special fund to be known as the "Oil and Gas Conservation Fund" by the state treasurer of the state of Montana, and the fund to be raised shall be used for the purpose of paying all expenses of said commission and for no other purpose; all monies from this fund shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any balance remaining in said fund shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved by the board of examiners, and paid by the state treasurer upon warrants drawn by the state auditor out of the oil and gas conservation fund.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose, or otherwise accruing to said fund. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act.

**History:** En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957.

#### **Amendments**

The 1955 amendment in the first sentence of subd. A inserted the words "or the purchasers from said operators or producers, as the commission may within its discretion direct, said operators and producers, or purchasers," and the provided clause; in the third sentence inserted the words "producers, operators, or purchasers shall make such payment on" and in subd. B inserted the words "he, or the purchaser of the natural gas produced by him" in the second sentence.

The 1957 amendment deleted all changes made by the 1955 amendment and further amended this section as follows: In subd. A inserted the words "and they will pay" appearing after the words "to pay" in the first sentence, inserted the numbers (1), (2) and (3) in the schedule of assessments, inserted the words "per barrel" at the end

of (1) and (2) and added the second paragraph; in subd. B deleted the words "beginning with the month of July of the year one thousand nine hundred and fifty-three (1953)," which appeared between the words "year" and "render"; in subd. E inserted the word "deemed" in the phrase "as may be deemed necessary" added to the end of this subd. the words "as is elsewhere provided in this act" and substituted the words "subsection A of this section, above," for "section 22A" each time they appear in subds. B and E.

#### **Repealing Clauses**

Section 2 of Ch. 234, Laws 1955 and Sec. 2 of Ch. 198, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 198, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.



**60-146. Definitions.** In this act the expression:

(a) "Bureau" shall mean the bureau of mines and geology of the state of Montana school of mines;

(b) "Commission" shall mean the oil and gas conservation commission of the state of Montana;

(c) "Station" shall mean the petroleum field station located in the city of Billings, county of Yellowstone, state of Montana, including all real and personal property used in connection with the operation of said station, and buildings and structures upon such real property.

**History: En. Sec. 1, Ch. 32, L. 1957.**

#### **Title of Act**

An act relating to the transfer of jurisdiction, control, supervision, custody, property and records of petroleum field station, located in Billings, Yellowstone county, Montana, from bureau of mines and geology of the state of Montana school of

mines to the oil and gas conservation commission of the state of Montana; providing for the physical transfer of all property used in connection with the operation of said station; providing for availability of same to bureau of mines and geology after transfer; providing effective date of transfer; repealing all acts and parts of acts in conflict herewith.

**60-147. Transfer of jurisdiction and record.** On or before the effective date, as hereinafter provided, all jurisdiction, control, supervision, custody, property and records of the said station shall be and become transferred from the jurisdiction of the bureau to the commission, and the said commission shall, after the effective date hereinafter provided, assume the said jurisdiction, control, supervision and custody of all property, real and personal, and records located at or pertaining to the said station; that the property so transferred shall be and become the property of the commission; that the operation and maintenance of the said station shall be done and performed by the commission from and after the said effective date hereinafter provided, and the necessary expenditures therefor shall be paid from the oil and gas conservation commission fund, upon proper vouchers, by the state treasurer; that the said transfer of property, real, personal, or mixed, and the records from the bureau to the commission shall be made without lien, encumbrance, or obligation of any sort, upon said property and records, and it is the express intention hereby to transfer said property and records to the commission free and clear.

**History: En. Sec. 2, Ch. 32, L. 1957.**

**60-148. Availability of facilities to bureau.** The commission is, by this act, authorized to make available to the authorized personnel or representatives of the bureau such facilities, equipment, records, and cores and cuttings, or samples of cores and cuttings, as are, or may be, required by the bureau in the furtherance of its oil and gas research and study.

**History: En. Sec. 3, Ch. 32, L. 1957.**

#### **Repealing Clause**

Section 5 of Ch. 32, Laws 1957 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 32, Laws 1957 read "The effective date of the transfer as hereinbefore described, provided and directed, shall be July 1, 1957."

## **CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION OF MANUFACTURE AND DISTRIBUTION**

**Section 60-201.** Petroleum products dealer's license.

**60-202.** License fees.

**60-201. (3913.1) Petroleum products dealer's license.** All persons, firms, copartnerships, corporations, trusts or agencies engaged, directly or indirectly, in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any gasoline, kerosene, distillate, road oil, fuel oil, or any oil or gas or oil and gas product, lubricating oil and greases, for use in motor vehicles or in internal combustion engines, shall make application to the state sealer of weights and measures of Montana, upon such blank forms as may be provided by said state sealer of weights and measures for the right to do business in the state of Montana and the making of such application shall be a condition precedent to the right of any such person, firm, copartnership, corporation, trust or agency to transact any such business within the state of Montana and upon the making and filing of such application and the payment of the proper fee, a license which shall be nontransferable shall issue to the applicant.

Such persons, firms, copartnerships, corporations, trusts or agencies are hereinafter, for brevity, designated dealers, and the term "dealers" whenever used herein, shall include all persons, firms, copartnerships, corporations, trusts or agencies described in this section.

**History:** En. Sec. 1, Ch. 109, L. 1927; amd. Sec. 2, Ch. 131, L. 1955; amd. Sec. 1, Ch. 96, L. 1957.

**Compiler's Note**

Section 1 of Ch. 131, Laws 1955 is compiled as section 90-129.

**Amendments**

The 1955 amendment substituted "state sealer of weights and measures" for "public service commission" and "commission" respectively in the first paragraph.

The 1957 amendment inserted the words "which shall be nontransferable" near the end of the first paragraph.

**60-202. (3913.2) License fees.** That effective on and after the first day of January, 1956, each retail dealer shall pay a license fee of two dollars (\$2.00) for each separate place of business which shall include one retail gasoline, diesel or fuel oil measuring device. Two dollars (\$2.00) for each additional gasoline, diesel or fuel oil measuring device in excess of one used at such place of business.

For vehicle tank meters and bulk petroleum meters of two and one-half (2½) inch and under, six dollars (\$6.00). All two and one-half (2½) inch and under meters for more than one fluid, ten dollars (\$10.00). Bulk petroleum meters over two and one-half (2½) inch, ten dollars (\$10.00). All meters over two and one-half (2½) inch for more than one fluid, fifteen dollars (\$15.00).

All vehicle tanks used for distribution of petroleum products without meters up to and including two hundred (200) gallons, eight dollars (\$8.00). All vehicle tanks without meters over two hundred (200) gallons and including three hundred (300) gallons, ten dollars (\$10.00). All vehicle tanks without meters over three hundred (300) gallons and including five hundred (500) gallons, twelve dollars (\$12.00). All vehicle tanks without meters over five hundred (500) gallons and including one thousand (1000) gallons, sixteen dollars (\$16.00). All vehicle tanks without meters over one thousand (1000) gallons and including two thousand (2000) gallons, twenty dollars (\$20.00).

It is unlawful to make hose delivery from vehicle tanks unless the

tanks have been calibrated by the division of weights and measures. Part of a compartment delivery can only be made by a certified meter or an approved can. Gauge stick measurement will not be permitted. All tank markers will require suitable provision for sealing in a definite position, approved by the division of weights and measures. The sealer of weights and measures shall by proper regulation, fix fees for retesting measuring devices and all tanks used for the distribution of petroleum products or any special service rendered.

All licenses shall be annual and expire December thirty-first.

All license fees, under this act, that are not paid before July first of each year, where measuring device is in use, there will be an added charge of fifty per cent (50%) and if the fee is not paid the equipment will be sealed and removed, by the sealer of weights and measures or his deputies, from service until such fee has been paid. Anyone found using a device or removing the seal before all license fees have been paid shall, upon conviction, be deemed guilty of a misdemeanor and subject to a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00).

**History:** En. Sec. 2, Ch. 109, L. 1927; amd. Sec. 3, Ch. 131, L. 1955; amd. Sec. 2, Ch. 96, L. 1957.

#### Amendments

The 1955 amendment completely re-wrote this section. Before amendment it read "Each dealer shall pay a license fee of one dollar for each separate place of business where such dealer transacts business, and one dollar additional for each gasoline pump or vending machine in excess of one used at such place of business. All licenses shall be annual and expire December thirty-first. Each refinery doing business in the state of Montana shall pay an annual license fee of one dollar."

The 1957 amendment substituted the words "measuring device" for "pump"

both times they appear in the first paragraph; added the fourth paragraph and in the sixth paragraph substituted "fifty per cent (50%)" for "twenty-five per cent (25%)" and inserted the words "by the sealer of weights and measures or his deputies."

#### Repealing Clause

Section 3 of Ch. 96, Laws 1957 repealed all acts or parts of acts in conflict therewith.

#### Repealing Clause and Saving Clause

Section 4 of Ch. 131, Laws 1955 read "All acts or parts of acts in conflict herewith are hereby repealed except that the present schedule of license fees shall remain in effect until January 1, 1956."

### 60-209. (3913.9) Grades of domestic and industrial fuel oil.

#### Operation and Effect

In a personal injury action it was proper to refuse to admit evidence of the flash point of fuel remaining in a storage tank following an explosion where the test fuel was not drawn from the tank until about three weeks after the accident, the tank was not in the exclusive control of anyone up to the date the sample was taken, and the sample was not tested for

its flash point by the statutory method. *Richardson v. Farmers Union Oil Co.*, 131 M 535, 312 P 2d 134, 141.

The only way to prove that a burner fuel would have a lower flash point than is required would be to prove a test by the statutory method. *Richardson v. Farmers Union Oil Co.*, 131 M 535, 312 P 2d 134, 140.

## CHAPTER 7—LEASE OF LAND OF LOCAL GOVERNMENTAL UNITS FOR DEVELOPMENT OF OIL AND GAS

Section 60-704. Tax deed lands of county—leases of reserved or excepted interest—validating existing leases.

**60-704. Tax deed lands of county—leases of reserved or excepted interest—validating existing leases.** When in any deed or contract for



sale a county has reserved or excepted an interest in oil and gas in and under any land acquired by tax deed, the board of county commissioners may lease such interest for oil and gas development purposes upon the same terms and conditions as are provided for the leasing of lands which have been acquired by tax deed, offered for sale and not sold, or may ratify, confirm and adopt any then existing mineral or oil and gas lease insofar as it describes such land. All such leases, ratifications, confirmations and adoptions heretofore executed by the board of county commissioners are declared to be valid and are ratified, approved and confirmed.

**History:** En. Sec. 1, Ch. 155, L. 1957.

**Title of Act**

An act authorizing counties to lease for oil and gas development purposes interests in oil and gas reserved or excepted by the counties in deeds or contracts covering lands acquired by tax deed, or to ratify, confirm and adopt existing leases of such land; validating such leases, ratifications,

confirmations and adoptions heretofore executed; and providing that this act shall be in force and effect upon passage and approval.

**Effective Date**

Section 2 of Ch. 155, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 8—UNDERGROUND GAS STORAGE RESERVOIRS

Section 60-801. Definitions.

60-802. Underground storage.

60-803. Eminent domain—use and limitations.

60-804. Certificate of commission—publication.

60-805. Proceedings.

**60-801. Definitions.** As used in this act (a) "underground reservoir" shall mean any subsurface sand, stratum or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom; (b) "natural gas" shall mean gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel; (c) "native gas" shall mean gas which has not been previously withdrawn from the earth; (d) "natural gas public utility" shall mean any person, firm or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within or through this state for ultimate public use; (e) "commission" shall mean the oil and gas conservation commission of the state of Montana; (f) "underground storage" shall mean the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir.

**History:** En. Sec. 1, Ch. 259, L. 1955.

**Title of Act**

An act relating to and providing for the acquisition by a natural gas public utility through the exercise of the right of eminent domain of sands, strata and formations in land for use as underground gas storage reservoirs and other property for use in connection therewith, and to

amend sections 93-9902, 93-9903, 93-9908 and 93-9911 of the Revised Codes of Montana of 1947, as amended by the Session Laws of Montana, 1953, chapter 245, sections 1, 2, 3 and 4, respectively, and to amend section 93-9909 of the Revised Codes of Montana of 1947, all relating to the right of eminent domain, and repealing all acts and parts of acts in conflict herewith.

**60-802. Underground storage.** The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes



more readily available natural gas to the domestic, commercial and industrial consumers of this state, or which provides a better year-round market to the various gas fields, serves the public interest and welfare of this state.

Therefore, in the manner hereinafter provided the commission and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

**History:** En. Sec. 2, Ch. 259, L. 1955.

**60-803. Eminent domain—use and limitations.** Any natural gas public utility may acquire through the exercise of the right of eminent domain as hereinafter provided for its use for the underground storage of natural gas any underground reservoir which the commission shall have found to be suitable and in the public interest for the underground storage of natural gas, and in connection therewith may acquire such other interests in property as may be required adequately to maintain and operate such underground reservoir facilities; provided, however, that the acquisition by the exercise of the right of eminent domain of underground reservoirs granted hereby, shall be limited as follows:

(a) No sand, formation, or stratum which is producing or has produced, or which is capable of producing oil, shall be subject to appropriation hereunder.

(b) No gas bearing sand, formation, or stratum shall be subject to appropriation hereunder, unless the recoverable volumes of native gas therein have all been produced or unless such sand, formation or stratum has a greater value or utility as an underground reservoir for the purpose of insuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas, or for the conservation of natural gas, than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas therein, provided that no gas, sand, formation or stratum shall be acquired under the terms of this act when the gas in the underground reservoir is being used for the secondary recovery of oil unless gas in necessary and required amounts is furnished to the operator or operators of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to it or them at the time of acquisition of the gas being used in such secondary operations, not exceeding, however, the quantity of the appropriated gas that remained recoverable from such sand, formation or stratum at the time of its acquisition, if such operator was or such operators were at such time entitled to the whole thereof, or if it was or they were at such time entitled to less than the whole thereof, then not to exceed the quantity thereof to which such operator was or operators were then entitled.

(c) Only such area of such underground sand, formation or stratum as may reasonably be expected to be penetrated by gas displaced or injected into such underground gas storage reservoir may be appropriated hereunder.

(d) No rights or interests in existing underground gas reservoirs, be-

ing used for the injection, storage or withdrawal of natural gas, owned or operated by a natural gas public utility as defined in this act other than the natural gas public utility seeking to acquire the same, shall be subject to appropriation hereunder.

The exercise of the right of eminent domain hereby granted shall be without prejudice to the rights of the owner of said lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in such manner as shall comply with orders, rules and regulations of the commission issued for the purpose of protecting underground reservoir against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with such regulations or orders in order to protect the storage reservoir shall be paid by the natural gas public utility.

**History:** En. Sec. 3, Ch. 259, L. 1955.

**60-804. Certificate of commission—publication.** Any natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the commission a certificate setting out findings of said commission (a) that the underground sand, stratum or formation sought to be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest; (b) the amount of native gas, if any, remaining therein and the portion thereof recoverable; (c) and that the applicant has in good faith sought to acquire the rights sought hereunder; provided, that the commission shall issue no such certificate until after public hearing is had on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state of Montana for service of process in a civil action as set forth in Chapter 30, Title 93, Revised Codes of Montana of 1947, as amended, and the executive secretary of the commission shall for such purposes be vested with the same powers and charged with the same duties as the clerk of the district court has under said chapter.

**History:** En. Sec. 4, Ch. 259, L. 1955.

**60-805. Proceedings.** Any natural gas public utility having first obtained a certificate from the commission as hereinbefore provided, desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner hereinafter provided. Such natural gas public utility shall present to the district court of the county wherein the land is situated, or to the judge thereof a complaint setting forth the purpose for which the said property is sought to be acquired, a description of the property sought to be appropriated and the names of the owners thereof as shown by the records of such county. The plaintiff shall file the certificate of the commission as a part of its complaint and no order by the court granting said complaint shall be entered without such certificate being filed therewith, and subse-

quent proceedings shall follow the procedure provided by law in the exercise of the rights of eminent domain, sections 93-9901, et seq. Revised Codes of Montana of 1947, as amended.

**History:** En. Sec. 5, Ch. 259, L. 1955.

amended sections 93-9902, 93-9903, 93-9908, 93-9909 and 93-9911, respectively.

**Compiler's Note**

Sections 6 to 10 of Ch. 259, Laws 1955

## TITLE 61—PARENT AND CHILD

- Chapter 1. Parent and child—children by birth and by adoption, 61-112.1, 61-112.2, 61-130.  
2. Adoption, 61-201 to 61-217.

### CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

- Section 61-112.1. Destruction of property by person under 18—liability of parents for.  
61-112.2. Limitation on amount of recovery.  
61-130. Consent of child's parents—when required—when not required—court process.

#### 61-104. (5833) Obligations of parents for the support and education, etc.

##### Manslaughter

Omission to perform an act required by law can be the basis for manslaughter. Hence, where evidence disclosed that child, age of 5 months, died due to starvation, that his weight at death was only 5 pounds 14 ounces, which was but 10 ounces over weight at birth, and that the father and mother had the means with which to care for the child, evidence would be sufficient to support conviction of manslaughter. *State v. Bischert*, 131 M 152, 308 P 2d 969.

##### Operation and effect

In a homicide prosecution of a mother for the alleged wilful omission to provide sufficient food and care for her three month old daughter, the state's own evidence showing that defendant did feed the infant, was seen holding and loving the child and did have the child to a doctor, and this evidence negated wilfulness and malice and there could not be a finding of second degree murder. *State v. Rivers*, 133 M 129, 320 P 2d 1004, 1006.

The omission to perform an act required by law can be the basis for manslaughter. *State v. Rivers*, 133 M 129, 320 P 2d 1004, 1006.

#### 61-105. (5834) Custody of legitimate child.

##### Habeas Corpus to Gain Custody

When decree of divorce was rendered in Utah and custody of children was granted to mother she then had the preference right. She waived this right when she offered to give up their custody and father took them to his home in Montana, and she could not deprive father of custody by habeas corpus proceedings in Montana unless he was an unfit person to

have the custody, or unless it was shown that the best welfare of the children required that they be taken from him. *State ex rel. Lessley v. District Court*, 132 M 357, 318 P 2d 571, 574.

##### References

Cited or applied in *Application of Enke*, 129 M 353, 287 P 2d 19, 23, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

#### 61-106. (5835) Custody of children where husband and wife living, etc.

##### References

Cited or applied in *Application of Enke*, 129 M 353, 287 P 2d 19, 23, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

61-112.1. Destruction of property by person under 18—liability of parents for. Any municipal corporation, county, city, town, school district or department of the state of Montana, or any person, or any religious organization whether incorporated or unincorporated, shall be entitled to recover damages in a civil action in an amount not to exceed three hundred dollars (\$300.00) in a court of competent jurisdiction from the parents of any person under the age of eighteen (18) years, living



with the parents, who shall maliciously or wilfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district or department of the state of Montana, or person or religious organization.

**History:** En. Sec. 1, Ch. 195, L. 1957.

#### **Title of Act**

An act authorizing the recovery of civil damages due to the malicious or wilful destruction of property of municipal corporations, counties, cities, towns, school

districts, departments of the state of Montana, or any person, religious organizations, by any person under the age of eighteen (18) years; providing for a limit of such damages of three hundred dollars (\$300.00) from parents, and court costs; providing for a repealing clause.

**61-112.2. Limitation on amount of recovery.** The recovery shall be limited to the actual damages in an amount not to exceed three hundred dollars (\$300.00) in addition to taxable court costs.

**History:** En. Sec. 2, Ch. 195, L. 1957.

#### **Repealing Clause**

Section 3 of Ch. 195, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**61-115. (5844) When a parent is liable for necessities supplied, etc.**

#### **References**

Cited in *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1098.

**61-121. (5850) Right of parent to determine the residence of child.**

#### **Operation and Effect**

Minor children whose parents are divorced take the domicile of the parent to whose custody they have been legally given. Application of *Enke*, 129 M 353, 287 P 2d 19, 22, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

Oregon court had jurisdiction to award custody of children where both parties in

a divorce action were before the court although the father then left the state with the children before the decree was rendered. The mother who was awarded the custody of the children had the right to fix their residence and their residence could not be changed except by the mother. Application of *Butts*, 129 M 440, 289 P 2d 949.

**61-124. (5853) Duty of child to support indigent parents.**

#### **References**

Cited in *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1098.

**61-125. (5854) Penalty for failure to support.**

#### **References**

Cited in *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1098.

**61-126. (5855) Civil action to enforce duty to support.**

#### **References**

Cited in *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1098.

**61-127 to 61-129.**

#### **Compiler's Note**

These sections were among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific

repeal of these sections in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

**61-130. (5859) Consent of child's parents—when required—when not required—court process.** (1) A legitimate minor child cannot be adopted

without the consent of both of its parents, if such parents be living;

(2) An illegitimate minor child cannot be adopted without the consent of its mother, if such mother be living; except that consent by the parents of a legitimate minor child, or consent by the mother of an illegitimate minor child shall not, in either case, be necessary, from a father or mother,

(a) deprived of civil rights by a court of competent jurisdiction; or,

(b) adjudged guilty by a court of competent jurisdiction of the crime of adultery; or,

(c) adjudged guilty by a court of competent jurisdiction of physical cruelty or habitual mental cruelty, toward said child; or,

(d) divorced by decree of a court of competent jurisdiction for adultery; or,

(e) adjudged to be an habitual drunkard; or,

(f) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,

(g) who has, in the state of Montana, or in any other state of the United States, wilfully abandoned such child; or,

(h) who has caused the child to be maintained by any public orphan's home, asylum, charitable home or charitable agency or any licensed adoption agency, or the state department of public welfare of the state of Montana for a period of one (1) year without contributing to the support of said child during said period.

(3) When any child who is an orphan (i.e., a child who has lost both father and mother), or a half-orphan (i.e., a child who has lost either father or mother), or who is an illegitimate child, has been kept and maintained in or at any public orphan's home, asylum, charitable home or charitable agency, or by the state department of public welfare in this state for a period of one (1) year or more, such orphan, half-orphan, or illegitimate child may be adopted with the consent of a licensed adoption agency as such an agency is defined by law, or with the consent of the state department of public welfare, or with the consent of the Montana state orphan's home, without the consent of a living parent, if any, unless such living parent has paid toward the expense of maintenance of such half-orphan or illegitimate child at least sixty per centum (60%) of the legitimate cost of keeping and maintaining said child during said period of one (1) year or more if able to do so.

(4) Whenever any child has been left by its parents in any public orphan's home, or asylum, or a children's home, or with any licensed adoption agency or foster home, for a period of more than one (1) year, and the parents of such child, if living, are not residents of the state of Montana, or the surviving parent, if living, is not a resident of the state of Montana, the consent of such parents or parent is not necessary to its adoption irrespective of whether such parents or parent have contributed to the support of the child during said period and, in all such cases, the state department of public welfare, or the Montana state orphan's home, or any licensed adoption agency, is authorized to give such consent as is in this chapter required, and such consent shall be given in the same manner that parents are authorized by law to consent to the adoption of children.

(5) (a) Whenever the adoption of a child, whether legitimate or illegitimate, is sought in any petition for adoption, and the case is one in which the consent of the parent is not required, the court shall, nevertheless, upon the filing of such petition, cause notice of said petition, and service of process for the attendance of said parent or parents at the hearing on said petition to be made on the parent or parents of the child in the following manner: The court shall order a citation to issue to the parent or parents in the name of the state of Montana, and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the court, and show cause why said petition should not be granted; except no citation shall be required in any case where the parent or parents have been deprived of the custody of their child or children by the judgment of a court of competent jurisdiction in a proceeding to have such child or children declared neglected or dependent children under the provisions of sections 10-501 to 10-519. Such citation together with a copy of the petition for adoption shall be personally served upon such parent or parents.

(b) If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of said citation in the manner provided for the publication of summons by section 93-3014. If after completion of such service, any parent so served does not appear, the court may act upon the petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person shall have the right to appeal from the order in the manner and form provided for appeals from the judgment in civil actions.

**History:** Ap. p. Sec. 4, 5th Div. Comp. Stat. 1887; amd. Sec. 313, Civ. C. 1895; amd. Sec. 1, p. 229, L. 1897; re-en. Sec. 3764, Rev. C. 1907; re-en. Sec. 5859, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1941; amd. Sec. 1, Ch. 51, L. 1947; amd. Sec. 1, Ch. 181, L. 1949; amd. Sec. 1, Ch. 208, L. 1955. Cal. Civ. C. Sec. 224. Based on Field Civ. C. Sec. 110.

#### **Compiler's Note**

This section was among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal

of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

#### **Amendment**

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

#### **Effective Date**

Section 2 of Ch. 208, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

### **61-131 to 61-133.**

#### **Compiler's Note**

These sections were among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific

repeal of these sections in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

### **61-134. (5863) Effect of adoption.**

#### **Compiler's Note**

This section was among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-

217. The title of act is set out as a note under 61-201.

#### **Operation and Effect**

Where a will created a trust for the sons of the testatrix, and provided that if either son should die before reaching fifty



years of age leaving issue and a wife, the son's share would be divided between such issue and the wife, a child adopted by a son after the death of the testatrix was not entitled to share as "issue." In re Miller's Trust, 133 M 354, 323 P 2d 885.

Under this statute, an adopted child does not obtain the status of a natural child as to relatives of the adoptive par-

ent, and the general rule that "issue" does not include an adopted child seeking to inherit through the adoptive parent is not altered. In re Miller's Trust, 133 M 354, 323 P 2d 885, 887.

#### References

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 395.

### 61-135. (5864) Effect on former relations of child.

#### Compiler's Note

This section was among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

#### Right of Adopted Child to Inherit from Natural Parents

There is nothing in this section or in

section 61-134, or in any other section of the laws of Montana that says that, upon adoption, the lawfully begotten bodily issue of a person ceases to be the heir of its natural parent. In re Kay's Estate, 127 M 172, 260 P 2d 391, 395.

The adoption of a child does not destroy his status as one of the issue of his natural ancestors nor does an adopted child lose his right to inherit from his natural parent. In re Kay's Estate, 127 M 172, 260 P 2d 391, 395.

### 61-136, 61-137.

#### Compiler's Note

These sections were among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific

repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

### 61-140.

#### Compiler's Note

This section was among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific

repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

## CHAPTER 2—ADOPTION

- Section 61-201. Definitions.
- 61-202. Who may be adopted.
- 61-203. Who may adopt.
- 61-204. Venue.
- 61-205. Persons required to consent to the adoption.
- 61-206. Withdrawal of consent.
- 61-207. Consent of the child.
- 61-208. Petition for adoption.
- 61-209. Investigation.
- 61-210. Summary decree.
- 61-211. Interlocutory and final decree.
- 61-212. Effect of final decree.
- 61-213. Confidential nature of record and proceedings.
- 61-214. Appeal.
- 61-215. Foreign adoption decrees.
- 61-216. Uniformity of interpretation.
- 61-217. Short title.

**61-201. Definitions.** As used in this act, unless the context otherwise requires, "child" means any minor person, and "agency" means any person, authority or agency legally empowered to place children for adoption. Singular words may extend and be applied to several persons or things, as



well as to one person or thing. Plural words may extend and be applied to one person or thing, as well as to several persons or things.

**History:** En. Sec. 1, Ch. 240, L. 1957.

**Title of Act**

NOTE.—Uniform State Law. Sections 61-201 through 61-217 constitute the significant sections of the "Uniform Adoption Act" approved by the National Conference of Commissioners on Uniform State Laws in 1953.

An act to make uniform the law relating to the adoption of children; repealing sections 61-127 to 61-137, both inclusive, of the Revised Codes of Montana, 1947, and repealing section 61-140, of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

**61-202. Who may be adopted.** Any child present within this state at the time the petition for adoption is filed, irrespective of place of birth or place of residence, may be adopted.

**History:** En. Sec. 2, Ch. 240, L. 1957.

**61-203. Who may adopt.** The following persons are eligible to adopt a child:

- (1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.
- (2) An unmarried person who is at least 21 years old.
- (3) A married person at least 21 years old who is legally separated from the other spouse.
- (4) In the case of an illegitimate child, its unmarried father or mother.

**History:** En. Sec. 3, Ch. 240, L. 1957.

**61-204. Venue.** Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

**History:** En. Sec. 4, Ch. 240, L. 1957.

**61-205. Persons required to consent to the adoption.** An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

- (1) Both parents, if living, or the surviving parent, of a legitimate child; provided, that consent shall not be required from a father or mother,
  - (a) deprived of civil rights by a court of competent jurisdiction; or,
  - (b) adjudged guilty by a court of competent jurisdiction of the crime of adultery; or,
  - (c) adjudged guilty by a court of competent jurisdiction of physical cruelty or habitual mental cruelty, toward said child; or,
  - (d) divorced by decree of a court of competent jurisdiction for adultery; or,
  - (e) adjudged to be an habitual drunkard; or,
  - (f) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,
  - (g) who has, in the state of Montana, or in any other state of the United States, wilfully abandoned such child; or,
  - (h) who has caused the child to be maintained by any public orphan's home, asylum, charitable home or charitable agency or any licensed adoption agency, or the state department of public welfare of the state of Montana for a period of one (1) year without contributing to the support of said child during said period; or,
- (2) The mother alone, if the child is illegitimate; or,
- (3) The legal guardian of the person of the child if both parents are

dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or,

(4) The executive head of an agency if both parents are dead or if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or,

(5) Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

The consents required by paragraphs (1) and (2) shall be acknowledged before an officer authorized to take acknowledgments, or witnessed by a representative of the state department of public welfare or of an agency, or witnessed by a representative of the court.

**History:** En. Sec. 5, Ch. 240, L. 1957.

**61-206. Withdrawal of consent.** Withdrawal of any consent filed in connection with a petition for adoption hereunder, shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

**History:** En. Sec. 6, Ch. 240, L. 1957.

**61-207. Consent of the child.** Consent of the child if twelve years of age or over, shall be required. Such consent shall be given in court, or be in writing, in such form as the court shall direct.

**History:** En. Sec. 7, Ch. 240, L. 1957.

**61-208. Petition for adoption.** (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) The full names, ages and place of residence of the petitioners, and, if married, the place and date of the marriage.

(b) When the petitioners acquired or intend to acquire custody of the child and from what person or agency.

(c) The date and place of birth of child, if known.

(d) The name used for the child in the proceeding, and if a change in name is desired, the new name.

(e) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.

(f) A full description and statement of value of all property owned or possessed by the child.

(g) Facts, if any, which excuse consent on the part of a parent, to the adoption.

(2) One copy of the petition shall be retained by the court. The

other shall be sent to the state department of public welfare and to any agency participating in the adoption proceeding.

(3) Any written consent required by this act may be attached to the petition, or may be filed, after the filing of the petition, with the consent of the court.

**History:** En. Sec. 8, Ch. 240, L. 1957.

**61-209. Investigation.** (1) Upon the filing of a petition for adoption the court may in its discretion order an investigation to be made by the state department of public welfare or any other private agency licensed and approved for such investigatory purposed by the state department of public welfare, and may in its discretion further order that a report of such investigation shall be filed with the court by the designated investigator within the time fixed by the court and in no event more than thirty (30) days from the issuance of the order for investigation, unless time therefor is extended by the court. Such investigation if ordered by the court shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) of this section located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of such investigation shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and state reasons therefor.

**History:** En. Sec. 9, Ch. 240, L. 1957.

**61-210. Summary decree.** If the child is related by blood to one of the petitioners, or is a stepchild of the petitioner, or the court finds that the best interests of the child will be furthered thereby, the court, after examination of the report required in section 9 [61-209], in its discretion may waive the entry of an interlocutory decree and the waiting period of six (6) months provided in section 11 [61-211] and grant a final decree of adoption if satisfied that the adoption is for the best interests of the child.

**History:** En. Sec. 10, Ch. 240, L. 1957.

**61-211. Interlocutory and final decree.** Upon examination of the report described in section 9 [61-209] and after hearing, the court may issue an interlocutory decree giving the care and custody of the child to the petitioners, pending the further order of the court. Thereafter the investigator shall observe the child in his adoptive home and report in writing to the court within six (6) months on any circumstances or conditions which may have a bearing on the adoption. After six (6) months from the date of the interlocutory decree the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the state department of public welfare and the investigator. The investigator shall file with the court a written report of its findings and



recommendations and certify that the described investigation if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child.

**History:** En. Sec. 11, Ch. 240, L. 1957.

**61-212. Effect of final decree.** (1) After the final decree of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.

**History:** En. Sec. 12, Ch. 240, L. 1957.

#### DECISIONS UNDER FORMER LAW

##### **Inheritance through Adoptive Parent**

Under section 61-134 an adopted child did not obtain the status of a natural child as to relatives of the adoptive parent, and the general rule that "issue" does not in-

clude an adopted child seeking to inherit through the adoptive parent was not altered. In re Miller's Trust, 133 M 354, 323 P 2d 885, 887.

**61-213. Confidential nature of record and proceedings.** (1) Unless the court shall otherwise order, all hearings held in proceedings under this act shall be confidential and shall be held in closed court without admission of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except on order of the judge of the court in which the decree of adoption was entered for good cause shown.

(3) All files and records pertaining to said adoption proceedings in the county and state departments of public welfare or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown.

**History:** En. Sec. 13, Ch. 240, L. 1957.

**61-214. Appeal.** An appeal may be taken from any final order, judgment or decree rendered hereunder to the district court by any person aggrieved thereby, in the manner provided for appeals from said court in other civil matters.

**History:** En. Sec. 14, Ch. 240, L. 1957.



**61-215. Foreign adoption decrees.** When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by section 12 [61-212] of this act.

**History:** En. Sec. 15, Ch. 240, L. 1957.

**61-216. Uniformity of interpretation.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** En. Sec. 16, Ch. 240, L. 1957.

**61-217. Short title.** This act may be cited as the "Uniform Adoption Act."

**History:** En. Sec. 17, Ch. 240, L. 1957.      repealed all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 18 of Ch. 240, Laws 1957 re-

## TITLE 62—PARKS AND PUBLIC RECREATION

- Chapter 1. County parks and recreational areas, 62-102.  
3. State parks, 62-304.

### CHAPTER 1—COUNTY PARKS AND RECREATIONAL AREAS

Section 62-102. Use of land—limitation of expenditures.

**62-102. (4444.2) Use of land—limitation of expenditures.** All tracts of land acquired under this act shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number. No county shall be authorized to expend to exceed five thousand dollars (\$5,000.00) per annum out of the general fund of the county for the purpose of maintaining parks as herein provided. Except as otherwise provided by law, there are no restrictions on expenditures for the purpose of acquiring and equipping county parks.

**History:** En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959.

#### Amendment

The 1959 amendment substituted "five thousand dollars (\$5,000.00) per annum" for "three thousand dollars (\$3,000.00)"; substituted "maintaining" for "acquiring and equipping" and substituted the last

sentence for a clause that read "nor may any county thereafter expend to exceed one thousand dollars (\$1,000.00) per year out of the general fund of the county in maintenance of the same."

#### Repealing Clause

Section 2 of Ch. 229, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 3—STATE PARKS

Section 62-304. Powers and duties.

#### 62-301. Purpose.

##### References

Cited or applied in State ex rel. Olsen v. Sundling, 128 M 596, 281 P 2d 499, 501.

**62-304. Powers and duties.** The commission is hereby authorized and directed to make a study to determine the scenic, historic, archaeologic, scientific and recreational resources of the state, and shall have power by purchase, lease, agreement, or by acceptance of donations, or condemnation, to acquire for and in the name of the state, any such areas, sites or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission shall also have power in its discretion to receive and accept in the name of the state, in fee or otherwise, any such areas, sites, or objects conveyed, entrusted, donated, or devised to the state, and with like discretion to accept gifts, bequests, or contributions of money or other property to be expended or used for any of the purposes of this act; provided, that no contract shall be entered into or other obligation incurred under the provisions of this act until moneys have been appro-

priated therefor by the legislature or are otherwise made available as herein provided. The commission shall also have jurisdiction, custody and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments which are now under the control and management of the state, including wayside camps and other public conveniences acquired, improved and maintained by the state highway commission and contiguous to the state highway system.

**History:** En. Sec. 4, Ch. 48, L. 1939;  
amd. Sec. 1, Ch. 46, L. 1955.

#### **Amendment**

The 1955 amendment substituted the word "including" for the word "except" in the last sentence.

#### **Repealing Clause**

Section 2 of Ch. 46, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **In General**

Where the state, as bailee of a road roller given to it by the federal government, was in lawful possession, it is therefore lawfully entitled to that possession as against anyone with no better right. It may vindicate that possession accordingly and to that end may maintain an action in claim and delivery where there was an unauthorized sale by a person purporting to act for the state to a third person. *State ex rel. Olsen v. Sundling*, 128 M 596, 281 P 2d 499, 502.

## TITLE 63—PARTNERSHIP

### CHAPTER 2—PARTNERSHIP IN GENERAL—RELATION OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

#### 63-201. Partner agent of partnership as to partnership business.

##### Business of Partnership

The sale of all the property of a partnership is not the carrying on in the usual way of the business of a partnership within the meaning of this section. *Ditzel v. Kent*, 131 M 129, 308 P 2d 628, 632.

##### Sale of Partnership Property

Where real estate broker, when dealing with members of a partnership, knew that one of the partners did not have authority to bind the other partners, he could not bring an action for breach of contract for payment of the commission when the only signer to the contract was one of the partners. *Ditzel v. Kent*, 131 M 129, 308 P 2d 628, 632.

#### 63-202. Conveyance of real property of the partnership.

##### Knowledge of Lack of Authority to Bind Partnership

Subdivision 4 of this section has no application where real estate broker, in attempting to enforce a contract for the

payment of a commission which contract was signed by only one partner, knew that the one partner did not have authority to bind the partnership. *Ditzel v. Kent*, 131 M 129, 308 P 2d 628, 632.

### CHAPTER 3—PARTNERSHIP IN GENERAL—RELATION OF PARTNERS TO ONE ANOTHER

#### 63-301. Rules determining rights and duties of partners.

##### References

Cited or applied in *Hansen v. Hansen*, 130 M 175, 297 P 2d 879, 883.

##### Collateral References.

Liability for assault by partner. 30 ALR 2d 859.

Right of partner to account where firm business or transaction are illegal. 32 ALR 2d 1345.

Lessee interest of individual as becoming partnership asset of firm subsequently formed. 37 ALR 2d 1076.

#### 63-304. Partner accountable as a fiduciary.

##### Operation and Effect

Where a partner assumes the responsibility of management and operation of a partnership business, and takes over the accounts, books and bank accounts thereof, he acts as trustee for the partnership and his books and accounts of the part-

nership must be full, true and exact, and that he cannot defeat the rights of his co-partner to a true settlement and a proper distribution of the assets by failing to keep full and complete accounts. *Hansen v. Hansen*, 130 M 175, 297 P 2d 879, 881.

### CHAPTER 4—GENERAL PARTNERSHIP—PROPERTY RIGHTS OF A PARTNER

#### 63-402. Nature of a partner's right in specific partnership property.

##### References

Cited or applied in *Hansen v. Hansen*, 130 M 175, 297 P 2d 879, 884.

### CHAPTER 5—GENERAL PARTNERSHIP—DISSOLUTION AND WINDING UP

#### 63-503. Causes of dissolution.

##### References

Cited or applied in *McNaught v. Weyh*,

128 M 418, 276 P 2d 491, 495; *Hansen v. Hansen*, 130 M 175, 297 P 2d 879, 883.



**63-513. Liability of persons continuing the business in certain cases.****Partnership Accounting**

Where no balance of the partnership business could be arrived at without accounting, the defendant made all his records available and had thought there was a loss instead of a profit, and the plaintiff's

demand was more than the final accounting showed, interest on the amount due was figured from the date of the judgment rather than the date of the termination of the partnership. *Shidu v. Hollenback*, 133 M 265, 322 P 2d 325, 329.

**63-514. Rights of retiring or estate of deceased partner, etc.****Partnership Accounting**

Where the circumstances were such that no balance of the partnership business could be arrived at without the accounting asked for by the plaintiff, inter-

est on the amount due from the defendant was figured from the date of the judgment rather than the date of the termination of the partnership. *Shidu v. Hollenback*, 133 M 265, 322 P 2d 325, 329.

## TITLE 64—PERSONS AND PERSONAL RIGHTS

Chapter 2. Personal rights—libel and slander—protection of personal relations, 64-211 to 64-213.

### CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

64-112. (5685) Power of persons whose incapacity has been adjudged, etc.

#### References

Cited or applied in *State v. Kitchens*,  
129 M 331, 286 P 2d 1079, 1081.

### CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER— PROTECTION OF PERSONAL RELATIONS

Section 64-211. Discrimination on grounds of race, color, or creed in places of public accommodation or amusement prohibited.

64-212. Merchant, premises and merchandise defined.

64-213. Right of merchant to request individuals to keep merchandise in full view—freedom from liability.

64-203. (5690) Libel defined.

#### Business Advertising

A private corporation may maintain an action for libel respecting its business. *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 276, 287.

Newspaper ad to buyers of life insurance warning them about representations by certain agents and requesting that they report proposals offered to insurance commissioner for his opinion was libelous

per se. *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 276, 289.

#### Publication of Libel

Complaint by private corporation for libel was sufficient where it charged that the publication was made of and concerning it. *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 276, 288, 289.

64-211. Discrimination on grounds of race, color, or creed in places of public accommodation or amusement prohibited. No person, partnership, corporation, association or organization owning or managing any place of public accommodation or amusement shall discriminate against any person or group of persons solely on the ground of race, color or creed.

History: En. Sec. 1, Ch. 240, L. 1955.

all acts and parts of acts in conflict herewith.

#### Title of Act

An act to guarantee the full and equal enjoyment of all places of public accommodation and amusement, and repealing

#### Repealing Clause

Section 2 of Ch. 240, Laws 1955 repealed all acts and parts of acts in conflict therewith.

64-212. Merchant, premises and merchandise defined. The term "merchant" as used herein shall mean an owner or operator, and the agent, consignee, employee, lessee, or officer of an owner or operator, of any merchant's premises. The term "premises" shall mean any establishment or part thereof wherein merchandise is displayed, held or offered for sale. The term "merchandise" shall mean any personal property, capable of manual delivery, displayed, held or offered for sale by a merchant.

**History:** En. Sec. 1, Ch. 11, L. 1957.

**Title of Act**

An act relating to the right of any merchant, as specifically defined, to request any individual on his premises to keep in

full view any merchandise the individual may have removed from its place of display and providing that the merchant shall not be liable for civil or criminal slander on account of having made such a request.

**64-213. Right of merchant to request individuals to keep merchandise in full view—freedom from liability.** Any merchant shall have the right to request any individual on his premises to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. No merchant shall be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request.

**History:** En. Sec. 2, Ch. 11, L. 1957.

## TITLE 65—PLEDGES AND TRUST RECEIPTS

### CHAPTER 2—UNIFORM TRUST RECEIPTS ACT

#### 65-201. Definition of terms.

##### Operation and Effect

An insurance company was liable for the damage to an automobile in possession of an insured dealer who was a trustee under a trust receipt transaction, where the policy provided for the payment of all

sums the dealer became obligated to pay because of injury to property customarily left in garages, but excluded property owned or loaned or rented to the insured. *Keating v. Universal Underwriters Ins. Co.*, 133 M 89, 320 P 2d 351, 354.

#### 65-202. What are trust receipt transactions.

##### In general

Where the financier advances funds for the purchase of the chattel, purchases it and receives title to it from the manufacturer, and delivers possession to the dealer, who gives his trust receipt to the financier, it is a tripartite or true orthodox trust receipt transaction, and where the dealer has title and gives his receipt to the financier it is a bipartite trust receipt transaction. *Keating v. Universal Underwriters Ins. Co.*, 133 M 89, 320 P 2d 351, 354.

A cardinal object of trust receipt transactions is to enable the borrower to sell the goods in order to pay the lender, but

the transactions never have for their object the vesting of ownership in the dealer. *Keating v. Universal Underwriters Ins. Co.*, 133 M 89, 320 P 2d 351, 355.

A trustee under a trust receipt transaction assumes the full risk of loss or destruction of property left in his possession when the loss is due to his negligence. *Keating v. Universal Underwriters Ins. Co.*, 133 M 89, 320 P 2d 351, 357.

One of the purposes of the act is to make bipartite trust receipt transactions as valid as tripartite trust transactions. *Keating v. Universal Underwriters Ins. Co.*, 133 M 89, 320 P 2d 351, 357.

#### 65-213. Filing and refiling.

##### Operation and Effect

Even though none of the documents in a trust receipt transaction between an automobile dealer and a finance company were filed or recorded, the fact made no

difference with respect to the liability of an insurer for injury to an automobile in the possession of the insured dealer. *Keating v. Universal Underwriters Ins. Co.*, 133 M 89, 320 P 2d 351, 357.



## TITLE 66—PROFESSIONS AND OCCUPATIONS

- Chapter 1. Architecture—regulation of practice, 66-103, 66-106, 66-107, 66-112, 66-114.  
2. Auctioneers and auction sales, 66-220 to 66-230.  
4. Barbers and barber shops, 66-403, 66-408, 66-411.  
5. Chiropractic—regulation of practice, 66-505.  
8. Cosmetology (beauty shops) regulation, 66-801, 66-802, 66-815, 66-817.  
10. Medicine—regulation of practice, 66-1003.  
13. Optometry—regulation, 66-1301, 66-1302, 66-1305, 66-1307, 66-1311, 66-1316, 66-1317.  
15. Pharmacy—regulation of sale of drugs and medicines, 66-1507, 66-1508.  
18. Public accountants—regulation, 66-1806.  
19. Real estate brokers—regulation—real estate commissioner, 66-1903, 66-1910, 66-1916, 66-1917.  
20. Stock-brokers and investment companies (blue sky law), 66-2002, 66-2003, 66-2007, 66-2018, 66-2023, 66-2024.  
22. Veterinary medicine—regulation of practice, 66-2201 to 66-2204, 66-2207 to 66-2212.  
23. Engineers and land surveyors, 66-2324 to 66-2347.  
24. Plumbers, 66-2403, 66-2412 to 66-2426.

### CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

- Section 66-103. Definitions—examinations for certificates to practice—subjects embraced in—granting of certificates—registration without examination under certain circumstances.  
66-106. Penalty for illegal practice or misuse of title.  
66-107. Registration limited to individuals—employees of architects entitled to practice under supervision—exceptions—exemptions.  
66-112. Revocation of license.  
66-114. Scale of compensation for architects on public buildings.

**66-103. (3231) Definitions—examinations for certificates to practice—subjects embraced in—granting of certificates—registration without examination under certain circumstances.** (a) Except as otherwise provided in this act, no person shall practice architecture in the state of Montana or use the title "architect" or "registered architect," or any words, letters, figures, or other device indicating or intending to imply that he or she is an architect, without having qualified as required by this act.

(b) The practice of architecture within the meaning and intent of this act consists of rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or any other service in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(c) An architect within the meaning of this act is an individual technically and legally qualified to practice architecture and who is authorized under this act to practice architecture.

(d) A building, for the purposes of this act, is a structure consisting of foundation, floors, walls, columns, girders, and roof, or a combination of any number of these parts, including related mechanical and electrical equipment, with or without other parts or appurtenances.

(e) Every person hereafter wishing to practice architecture in this state shall apply to said board for a certificate so to do. Every person so

applying shall submit to an examination in the following branches, to-wit: Arithmetic and elementary mathematics, knowledge of building materials and construction, structural, mechanical and electrical engineering phases of construction, architectural drawing, technical education and experience, and such other branches as the board may deem advisable. Said board shall cause such examination to be both scientific and practical, but of sufficient severity to test the candidate's fitness to practice architecture in this state. After examination said board shall, if the candidate has been found qualified, grant a certificate to such candidate to practice architecture within the state of Montana, which said certificate can only be granted on the consent of not less than two members of the board, and attested by the secretary, and have the seal of said board attached thereto; provided, that the president of the board may, in the time of intervening between the sessions of the board, grant a certificate to any person desiring to practice architecture within the state of Montana, after satisfying himself of the qualifications of the applicant, which said certificate shall be good until the next regular meeting of the board; provided, however, the board may make arrangements with similar boards in the several states insofar as practicable, whereby due credit for state and territorial licenses will be allowed in the state of Montana to such licensees of said boards as desire to secure license to practice architecture in this state, and whereby licensees of the board of architectural examiners in this state will secure due credit for license issued by said board whenever such licensees desire to secure license to practice in any other state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of architecture in the state of Montana. The board may, if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states. The board shall by regulation establish methods and procedures for investigation of applicants for license by reciprocity.

(f) Any properly qualified person shall be granted registration without examination who submits an affidavit establishing to the satisfaction of the board of architectural examiners that he or she was a resident of the state of Montana for one (1) year immediately preceding the passage and approval of this act, that he or she was regularly engaged in the practice of architecture in the state of Montana for five (5) years immediately preceding July 1, 1957; provided that registration shall not be granted under this subsection unless the application therefor is filed with the board of architectural examiners within one (1) year after passage and approval of this act.

**History:** En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1957.

**Amendment**

The 1957 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**66-106. (3234) Penalty for illegal practice or misuse of title.** Any person who shall use the title "architect" or "registered architect" or any other words, letters, figures, or other device indicating or intending to imply that the person using the same is an architect, or who shall engage

in the practice of architecture within the meaning of this act, or shall accept compensation for rendering architectural service, without first having complied with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this act shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

**History:** En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R. C. M. 1921; amd. Sec. 4, Ch. 149, L. 1957.

#### **Amendment**

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

#### **Separability Clause**

Section 5 of Ch. 149, Laws 1957 read

"If any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

#### **Repealing Clause**

Section 6 of Ch. 149, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**66-107. (3235) Registration limited to individuals — employees of architects entitled to practice under supervision—exceptions—exemptions.**

(a) No firm, company, partnership, association, corporation or other similar organization shall be registered as an architect. Only individuals shall be registered as architects but a number of architects constituting a firm may use the collective title "architects" or "registered architects."

(b) Nothing contained in this act shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this act from acting under the instruction, control, or supervision of their employers, or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto. Nor shall anything contained in this act be construed to apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health; nor to prevent the preparation of details and shop drawings by persons, other than architects, for use in connection with the execution of their work; nor to prevent the preparation of drawings or details for fixtures, cabinet work, furniture, or other interior appliances or equipment, or for any work necessary to provide for their installation unless the same involves public health or safety. None of the acts enumerated in this paragraph shall be interpreted or construed as the practice of architecture.

(c) Nothing in this act shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this act:

1. Consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government.



2. Professional engineers from performing architectural services which are purely incidental to their engineering practice.

3. Any person from planning, designing, altering, constructing, repairing, or supervising construction of residential or farm buildings.

4. The planning, designs, alteration, consultation, repair or supervision of a building by its owner.

History: En. Sec. 7, Ch. 158, L. 1917;  
re-en. Sec. 3235, R. C. M. 1921; amd. Sec.  
2, Ch. 149, L. 1957.

**Amendment**

The 1957 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**66-112. (3240) Revocation of license.** The board of architectural examiners may revoke any certificate in the manner hereinafter provided if proof satisfactory to the board be presented in the following cases: (a) In case it is shown that the certificate was obtained through fraud or misrepresentation; (b) In case the holder of the certificate has been found guilty by said board or by a court of justice of any fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) In case the holder of the certificate has been found guilty by said board of gross incompetency or of recklessness in the planning or construction of buildings.

The proceedings for revocation of a certificate shall be commenced by filing written charges against the accused with the board of architectural examiners either by the board itself or by any complainant. A copy of the charges together with a notice of the time and place of hearing shall be served on the accused at least thirty calendar days in advance of such hearing. Where personal service cannot be made within the state of Montana, service may be made by publication in accordance with such rules as the board may adopt, following generally and in principle the provisions of sections 93-3013, 93-3014, and 93-3015 of the Revised Codes of Montana of 1947. At the hearing, the accused shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the board is hereby empowered to administer oaths. The board shall make a written report of its findings and conclusions, which report, with a transcript of the entire record of the proceedings, shall be filed in the office of the secretary of state, and, if the board's findings and conclusions shall be adverse to the accused, his or her certificate shall stand revoked and annulled at the expiration of thirty days from the filing of such report, unless within said period of thirty days a writ of review shall be issued as hereinafter provided, in which event said certificate shall not stand suspended until the final determination of the courts upon such writ of review.

Any party aggrieved by the decision of the said board may seek a review thereof in the district court of the first judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, inclusive, Revised Codes of Montana of 1947, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

The said board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and



the secretary of the board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce the documents when duly directed by said board, the board shall have power to refer the said matter to the district court of the first judicial district of the state of Montana, which may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

History: En. Sec. 12, Ch. 158, L. 1917;  
re-en. Sec. 3240, R. C. M. 1921; amd. Sec.  
3, Ch. 149, L. 1957.

Amendment  
The 1957 amendment completely re-  
wrote this section. For section prior to  
amendment see parent volume.

66-114. Scale of compensation for architects on public buildings. No payment for professional services of any architect or architects, relating to the planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district in the state, shall hereafter be made at any greater rate of compensation for such professional services than hereinafter set forth; and no contract for professional services of any architect or architects, relating to the planning or construction of any such public buildings, works or improvements, shall hereafter be entered into by any board, department or agency of the state of Montana, or of any county, city or school district in the state which shall provide for payment of any greater rate of compensation for such professional services than the following percentages of actual cost of construction of such buildings, works or improvements, to wit:

“A” Rate—Specialized Types: Structures of individual design and detail requiring special skill and prolonged study such as banks, clinics, club buildings, hospitals, libraries, memorials, monuments, museums, and residences:

	Fee	Construction Cost
	8.00% of first	\$ 50,000
Plus	7.75% of next	\$ 50,000
Plus	7.50% of next	\$100,000
Plus	7.00% of next	\$300,000
Plus	6.00% of next	\$500,000
Plus	5.00% of all additional	

“B” Rate—Conventional Types: Structures of conventional character such as apartments, administrative buildings, bus and railway depots, churches, dormitories, fire stations, nurses’ homes, office buildings, restaurants, schools, shopping centers, stores and shops and theatres:

	Fee	Construction Cost
	7.50% of first	\$ 50,000
Plus	7.25% of next	\$ 50,000
Plus	7.00% of next	\$100,000
Plus	6.50% of next	\$300,000
Plus	5.50% of next	\$500,000
Plus	4.50% of all additional	

"C" Rate—Utilitarian Types: Structures of simplest utilitarian character such as airport hangars, armories, field houses, garages, shop maintenance buildings, multiple housing projects, stadiums, warehouses:

	Fee	Construction Cost
	6.50% of first	\$ 50,000
Plus	6.25% of next	\$ 50,000
Plus	6.00% of next	\$100,000
Plus	5.50% of next	\$300,000
Plus	4.50% of next	\$500,000
Plus	3.50% of all additional	

All architectural plans and specifications for such public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the architect responsible therefor.

**History:** En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957.

#### **Amendment**

The 1957 amendment substituted the three separate rate schedules for one (text of which see parent volume).

#### **Separability Clause**

Section 2 of Ch. 68, Laws 1957 read

"If any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

#### **Repealing Clause**

Section 3 of Ch. 68, Laws 1957 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 2—AUCTIONEERS AND AUCTION SALES

- Section 66-220. Short title.  
 66-221. Definitions.  
 66-222. Unlawful to sell at public auction without first securing license.  
 66-223. Application for license—contents.  
 66-224. Bond—filing—liability on.  
 66-225. License fee—disposition.  
 66-226. Issuance of license—terms—record—form.  
 66-227. Inventory of merchandise sold and prices received—filing.  
 66-228. Unlawful acts—penalty.  
 66-229. Exemptions from act.  
 66-230. Powers of cities and towns not affected.

66-220. Short title. This act shall be known as the "Public Auction Law."

**History:** En. Sec. 1, Ch. 111, L. 1955.

#### **Title of Act**

An act defining public auction sales and to regulate and license sale by auction of new merchandise, and to fix the amount

of license fees to be paid, to provide for the collection thereof and to require bond and the filing of inventories of goods sold, and to provide for exemptions from this act, to grant full power to towns and cities to pass auction sale laws and to

provide penalties for the violation or non-compliance of any of terms of this act, and to provide a saving clause; and providing an effective date.

**66-221. Definitions.** The words "public auction sales" when used in this act, shall mean the offering for sale or selling of new goods, wares or merchandise to the highest bidder or offering for sale or selling of new goods, wares or merchandise at a high price and then offering the same at successive lower prices until a buyer is secured, in the manner defined and set out in sections 66-213 and 66-214.

The words "new goods, wares and merchandise" when used in this act, shall mean and include all goods, wares and merchandise not previously sold at retail.

**History:** En. Sec. 2, Ch. 111, L. 1955.

**66-222. Unlawful to sell at public auction without first securing license.** It shall be unlawful for any person, firm, association or corporation to sell, dispose of, or offer for sale at public auction in the state of Montana any new goods, wares or merchandise, unless such person, firm, association or corporation, and the owners of such new goods, wares or merchandise to be offered for sale or sold if such are not owned by the vendors, shall have first secured a license as herein provided and shall have complied with the other requirements of this act herein set forth.

**History:** En. Sec. 3, Ch. 111, L. 1955.

**66-223. Application for license—contents.** Any person, firm, association or corporation desiring to offer any new goods, wares or merchandise for sale at public auction shall file application for a license for that purpose with the treasurer of the county in this state in which the said auction is proposed to be held. The application shall be filed not less than ten (10) full days prior to the date the said auction is to be held. The application shall state the following facts:

(a) The name, residence and postoffice address of the person, firm, association or corporation making the application, and if a firm, association or corporation, the name and address of the members of the firm or officers of the association or corporation, as the case may be.

(b) If the applicant is a corporation then there shall be stated on the application form the date of incorporation, the state of incorporation and if for a corporation formed in a state other than the state of Montana the date on which such corporation qualified to do business as a foreign corporation in the state of Montana.

(c) The name, residence and postoffice address of the auctioneer who will conduct such auction sale.

(d) A detailed inventory and description of all such new goods, wares or merchandise to be offered for sale at such auction which inventory shall set forth the cost to the applicant of the several items contained in such inventory.

(e) Attached to the application shall be copies of notices, which ten (10) days before the said application has been filed, shall have been mailed registered mail by the proposed seller to the state board of equalization of the state of Montana or such other department as may be charged



with the duty of collecting gross income taxes, corporation licenses, or such other taxes of a comparable nature, and to the assessor of the county in which said auction is to be held. The said notices must state the precise time and place where the said auction is to be held, the approximate value of the new goods, wares or merchandise to be offered for sale or sold and such other information as the said state board of equalization or the said county assessor may request.

(f) The number of days on which said auction will be held.

(g) The said application shall be verified.

**History:** En. Sec. 4, Ch. 111, L. 1955.

**66-224. Bond—filing—liability on.** At the time of filing said application, and as a part thereof, the applicant shall file and deposit with the said county treasurer a bond, with sureties to be approved by the said county treasurer, in the penal sum of two (2) times the value of the merchandise proposed to be offered for sale at public auction as shown by the inventory filed, running to the state of Montana, and for the use and benefit of any purchaser of any such new goods, wares or merchandise at the said auction who might have a cause of action of any nature arising from or out of a sale or sales at such auction or against the applicant or against the auctioneer; the said bond shall be further conditioned on the payment by the applicant of all taxes that may be payable by or due from, the applicant to the state of Montana or any department thereof or any subdivision of the state of Montana, municipal or otherwise, the payment of any fines that may be assessed by any court against the applicant or against the auctioneer for violation of the provisions of this act, and the satisfaction of all causes of action commenced within one (1) year from the date that such sale is made at any such auction and arising therefrom, provided, however, that the aggregate liability of the surety for all said taxes, fines, and causes of action shall in no event exceed the sum of such bond but there shall be no limitation of liability against the owners of the new goods, wares and merchandise or the auctioneer or the applicant for the license.

In such bond the applicant and surety shall appoint the treasurer of said county in which said bond is filed the agent of the applicant and the surety for the service of process. At the time that said bond is filed and deposited with the county treasurer, as herein provided, the auctioneer shall appoint the said county treasurer the agent of the auctioneer for the service of process. In the event of such service of process, the agent on whom such service is made shall, within five (5) days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he has been served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the court's jurisdiction.

The state of Montana or any department or subdivision, municipal or otherwise, thereof, or any person having a cause of action arising out of any sale of such new goods, wares or merchandise may join the applicant and the surety on such bond and the auctioneer in the same action, or



may in such action sue either such applicant or the surety or the auctioneer alone.

**History:** En. Sec. 5, Ch. 111, L. 1955.

**66-225. License fee—disposition.** The applicant desiring to file an application with the treasurer for a license to conduct a public auction shall pay to the treasurer of such county in which the said application is made, a license fee of fifty dollars (\$50.00) first day and twenty-five dollars (\$25.00) per day for each succeeding day that he proposes to conduct a public auction. And such applicant shall thereupon file the treasurer's receipt for such payment with the treasurer of the said county with whom the said application is filed. All moneys paid in accordance herewith shall be deposited by the county treasurer to the credit of the general fund of the county to which it is paid.

**History:** En. Sec. 6, Ch. 111, L. 1955.

**66-226. Issuance of license—terms—record—form.** Upon the filing of such application and after the applicant has established that he has fully complied with all the provisions of this act, the treasurer of said county, shall issue to the applicant a license authorizing the said applicant to conduct a public auction as proposed in said application; such license shall not be transferable and shall be valid only in the county where issued and shall not be valid in any town or city which has enacted an ordinance licensing public auction sales unless a license is also obtained from such city or town. No license shall be good for more than one (1) person, unless such persons shall be co-partners, nor for more than one (1) place in said county.

The treasurer of said county shall keep a record of such licenses in a book provided for that purpose, which shall at all times be open to public inspection.

No particular form of license shall be required to be issued by said treasurer. However, any license issued shall state the name of the person, firm, association or corporation which is licensed, the precise place at which such auction sale is to be held and the number of days for which the license is issued.

**History:** En. Sec. 7, Ch. 111, L. 1955.

**66-227. Inventory of merchandise sold and prices received—filing.** Within ten (10) days after the last day of said auction sale, the applicant shall file in duplicate with the county treasurer of the county wherein said auction sale was held, an inventory of all merchandise sold at such auction and the price received therefor, which inventory shall be verified by the person who filed the application for the license with the said treasurer. The county treasurer shall immediately after receiving such report and inventory forward a copy thereof to the state board of equalization.

**History:** En. Sec. 8, Ch. 111, L. 1955.

**66-228. Unlawful acts—penalty.** Every person, firm, association or corporation, either as principal or agent, who shall in any manner engage in, or conduct a public auction sale, without having first obtained a li-

cense as hereinbefore provided, or who shall knowingly advertise, represent or hold forth any sale of goods, wares or merchandise to be conducted contrary to the provisions of this act shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined in any sum not less than two hundred dollars (\$200) and not more than one thousand dollars (\$1,000.00), to which may be added imprisonment of not less than thirty (30) days and not more than one hundred and eighty (180) days.

**History:** En. Sec. 9, Ch. 111, L. 1955.

**66-229. Exemptions from act.** The provisions of this act shall not extend to the sale at public auction of livestock, farm machinery or farm produce or other items commonly sold at farm sales, or to auction sales by individuals of new merchandise, who maintain an established retail sales place of business and inventory of goods in the county in which the sale is to be held, and to auction sales under the direction of any court or court officers as may be required by law nor shall it apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to a bona fide sale of goods, wares and merchandise by sample for future delivery, or by sales made by sheriffs, constables or other public officers selling goods, wares and merchandise according to law, nor to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors.

**History:** En. Sec. 10, Ch. 111, L. 1955; amd. Sec. 1, Ch. 225, L. 1959.

**Amendment**

The 1959 amendment substituted the words "who maintain an established retail sales place of business and inventory of goods in the county in which the sale is to be held" for the words "which was as-

essed personal property tax or is replacement stock of merchandise inventory which was assessed personal property tax in the county in which sale is to be had."

**Repealing Clause**

Section 2 of Ch. 225, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**66-230. Powers of cities and towns not affected.** The towns and cities of the state of Montana are hereby given full power and authority to tax, license and regulate persons, firms, associations or corporations engaging in or desiring to engage in public auctions, and may require a license and charge a fee therefor; but such license fee shall not exceed the amount provided in this act for a county license but shall be in addition thereto and such towns and cities may provide for penalties for violations of said ordinance. A city or town license shall not be in lieu of a county license.

**History:** En. Sec. 11, Ch. 111, L. 1955.

**Separability Clause**

Section 12 of Ch. 111, Laws 1955 read "If any section, subsection, paragraph, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such [un]constitutionality or invalidity shall not affect the con-

stitutionality or validity of the remaining portion or portions of this act."

**Effective Date**

Section 13 of Ch. 111, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

CHAPTER 4—BARBERS AND BARBER SHOPS

Section 66-403. Licensing and registration of barbers, barber shops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.

66-408. Compensation, funds and reports.

66-411. Fees to be paid by apprentices, students, barbers and barber shops.

**66-403. (3228.21) Licensing and registration of barbers, barber shops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.** A. A person is qualified to receive a certificate of registration to practice barbering:

(1) to (3). \* \* \* [Subsections (1) to (3), same as parent volume.]

Every apprentice must file with the board of barber examiners a statement in writing showing the name and place of business of his or her instructor, or school, the date of commencement of the apprenticeship, and the full name and age of said apprentice, and shall pay to the board of barber examiners a fee of four dollars (\$4.00), whereupon the board of barber examiners shall issue the said apprentice a card.

B. and C. \* \* \* [Subdivisions B and C, same as parent volume.]

D. A barber shop, school or college must be conducted at a fixed place of establishment; no person or corporation shall open or maintain a barber shop, school or college, or hold himself or itself out as engaging in or conducting a barber shop, school or college, unless first licensed so to do by the board of barber examiners. Every barber school, or college, operating within the state of Montana must be in charge of a person who has had ten (10) years' continuous experience as a barber, providing that the owner of such school, or college shall first secure from the board of barber examiners a permit to operate on payment of an annual license fee of fifty dollars (\$50.00), and shall keep said permit prominently displayed, and shall, before commencing business file with the secretary of state a bond to the state of Montana, which bond shall be approved by the attorney general, in the sum of two thousand dollars (\$2,000.00) conditioned upon the faithful compliance of said barber school, or college, with all the provisions of this chapter; and to pay all judgments that may be obtained against said schools, or colleges, or the owners thereof on account of fraud, misrepresentation or deceit practiced by them, or by their agents; provided, further, that barber schools, or barber colleges shall not charge patrons for barbering services rendered; provided, further, that all barber schools, or colleges shall keep prominently displayed a substantial sign as a barber school, or barber college. Provided, further, that all barber schools, or colleges, upon receiving students shall immediately apply to the board of barber examiners for student permits upon blank forms provided by the board of barber examiners for such purposes.

An application for a barber shop, school or college license shall be in writing and verified on a form provided by the board of barber examiners. Upon receipt of an application for a license hereunder, and upon payment of the initial inspection fee, said board of barber examiners shall cause an investigation and inspection to be made as to the character of the applicant, and upon proper notice and after proper hearing shall report its findings to the secretary of the board of barber examiners, who shall grant a license, if the board of barber examiners finds that the applicant is of good character, and that the proposed barber shop, school or college is equipped and will be conducted as required by this act. Every application must be granted or refused within thirty (30) days from the



date of filing of such application or within fifteen (15) days after the close of the hearing upon the application in case a hearing is held.

E. to I. \* \* \* [Subdivisions E to I, same as parent volume.]

**History:** En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957.

**Amendment**

The 1957 amendment in the last paragraph of subd. A raised the apprentice license fee from \$3 to \$4 and in the first paragraph of subd. D inserted the first provided further clause.

**66-408. (3228.26) Compensation, funds and reports.** Each member of the board shall receive a compensation of fifteen dollars (\$15.00) per day while attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board.

The board of barber examiners shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary.

The board shall make an annual report of its proceedings and moneys expended by it to the governor of the state for the year ending on the 31st day of December preceding the making of said report.

**History:** En. Sec. 8, Ch. 127, L. 1929; amd. Sec. 2, Ch. 237, L. 1957.

**Amendment**

The 1957 amendment raised the compensation each member shall receive per day from \$10 to \$15.

**66-411. (3228.29) Fees to be paid by apprentices, students, barbers and barber shops.** A. The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this act, shall be fifteen (\$15.00) dollars, and for the issuance of said certificate an additional four (\$4.00) dollars. The fee to be paid by an apprentice or student for a certificate of registration shall be the sum of four (\$4.00) dollars.

B. Each person registered as a barber, or barber apprentice, shall on or before the first day of July of each year pay a license fee of four (\$4.00) dollars for the renewal of his or her certificate of registration, and if any barber, or barber apprentice, shall fail to have such certificate renewed on or before the first day of August of each year such barber, or barber apprentice, shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee, of five (\$5.00) dollars, in addition to the regular fee of four (\$4.00) dollars provided for herein, and if a certificate of registration is not renewed within one year after date of expiration thereof, such barber, or barber apprentice, shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a six (6) months' course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted



from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

C. In addition to the fees and charges now provided by existing law, all barber shops heretofore established, and which have been under the inspection of the board of barber examiners, shall pay an annual license fee of three (\$3.00) dollars. Barber shops hereafter established shall pay an initial inspection license fee of fifteen (\$15.00) dollars for the first year or portion thereof, and shall pay an annual license fee of three (\$3.00) dollars for each calendar year thereafter.

D. All barber shops, schools or college licenses shall expire on the 31st day of May of each year, following the issuance of said license, and every owner or manager of a barber shop, school or college which continues in active operation shall annually, on or before May 31st renew his barber shop, school or college license and pay the required fee.

Every barber shop, school or college license which has not been renewed during the month of May in any year shall expire on the 31st day of May in that year, and for the restoration of an expired barber shop license the fee shall be ten (\$10.00) dollars, and for an expired barber school or college license, the fee shall be fifty-five (\$55.00) dollars.

**History:** En. Sec. 11, Ch. 127, L. 1929; from \$3 to \$4 in subds. A and B and from  
amd. Sec. 4, Ch. 18, L. 1931; amd. Sec. 4, \$1 to \$3 in subd. C.  
Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L.  
1939; amd. Sec. 3, Ch. 237, L. 1957.

#### Repealing Clause

Section 4 of Ch. 237, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1957 amendment raised the fees

### CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

Section 66-505. Applications to practice—fees for license.

**66-505. (3142) Applications to practice—fees for license.** Any person wishing to practice chiropractic in this state shall after March 5, 1951 make application to said board of chiropractic examiners through the secretary-treasurer thereof, and upon such form and in such manner as may be prescribed and directed by the board, at least fifteen (15) days prior to any meeting of said board. Each applicant shall be a graduate of a college of chiropractic approved by said board of chiropractic examiners in which he shall have attended a course of study of four (4) school years of not less than nine (9) months each, and after March 15, 1959, shall present evidence showing completion of two (2) full academic years of college or university work from an institution acceptable to the Montana state board of education; provided however, that those who are now duly licensed to practice chiropractic under the laws of the state of Montana shall not be affected by this provision. Application shall be made in writing and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, and how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice, accompanying the

same with proofs thereof, in the shape of diplomas, certificates, etc., and shall accompany said application with satisfactory evidence of good character and reputation.

There shall be paid to the secretary-treasurer of the state board of chiropractic examiners, by each applicant for a license, a fee of twenty-five dollars (\$25.00), ten dollars (\$10.00) of which shall accompany application and the remainder, fifteen dollars (\$15.00) shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1933; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955.

#### Compiler's Note

The date in the first sentence appeared as "March 15, 1951," before the 1955 amendment.

#### Amendment

The 1955 amendment inserted the word "shall" between the words "state" and

"after" and deleted the word "shall" which appeared after "March 5, 1951" in the first sentence; substituted in the second sentence the words "college of chiropractic approved by said board of chiropractic examiners \* \* \* shall not be affected by this provision" for "chartered school of chiropractic, in which he actually attended a course of study of at least four (4) school years of nine (9) months each, preceded by a four (4) years' high school course"; inserted the word "made" after the words "application shall be" and the word "and" before "how long" and "the length" in the third sentence.

## CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section 66-801. License required to practice or teach cosmetology or operate a beauty shop, cosmetological establishment or school, and provisions for registration of schools of cosmetology.

66-802. Definitions.

66-815. Fees.

66-817. Prohibited acts—penalties—injunctive relief.

**66-801. (3228.1) License required to practice or teach cosmetology or operate a beauty shop, cometological establishment or school, and provisions for registration of schools of cosmetology.** No person shall practice or teach cosmetology without a license and no place shall be used or maintained for the teaching of cosmetology for compensation, except under a certificate of registration, and no person shall operate, manage or conduct a beauty shop or school and teach the art therein, or practice therein, without a manager-operator license. Any person, firm, copartnership or corporation desiring to operate a cosmetological establishment shall make an application to the board for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

**History:** En. Sec. 1, Ch. 104, L. 1929; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955.

#### Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

**66-802. (3228.2) Definitions.** The practice and teaching of cosmetology is defined to be and includes any or all work generally and usually included in the term "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness and beautification

of the hair, scalp, face, arms or hands. Provided, however, that itinerant cosmetologists shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes, in any regularly established store or place of business, holding a license from the state of Montana as such store or place of business.

A cosmetological establishment is any premises, building or part of building whereon or wherein is practiced any branch or combination of branches of cosmetology, or the occupation of a hairdresser and cosmetician or cosmetologist.

A cosmetological establishment shall at all times be in charge of a manager-operator.

**History:** En. Sec. 2, Ch. 104, L. 1929; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955.

**Amendment**

The 1955 amendment added the second and third paragraphs.

**66-815. (3228.15) Fees.** Each applicant for examination to practice or teach shall pay, at the time of such application a fee of ten (\$10.00) dollars. Each person practicing cosmetology as an operator shall pay a fee of three (\$3.00) dollars for the issuance of a license, and the further fee of three (\$3.00) dollars annually for each renewal thereof. Each applicant for a manager-operator license shall pay a fee of five (\$5.00) dollars, for the issuance of such a license and the further sum of five (\$5.00) dollars annually for each renewal thereof. Each person teaching cosmetology shall pay a fee of five (\$5.00) dollars, for the issuance of a license, and the further sum of five (\$5.00) dollars annually for each renewal thereof. Every person, firm, co-partnership, or corporation, owning, operating or conducting a school of cosmetology shall pay the sum of twenty-five dollars for a certificate of registration therefor, and pay a farther sum of twenty-five (\$25.00) dollars annually for each renewal thereof. Each applicant for apprentice license shall pay an annual fee of three (\$3.00) dollars. Each applicant for itinerant license as a cosmetologist, shall pay a fee of twenty-five (\$25.00) dollars. Such license fees shall be paid annually in advance to the secretary of the board. No other or additional license or fee shall be imposed by any municipal corporation or any other political subdivision of the state of Montana for the practice or teaching of cosmetology.

**History:** En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959.

**Amendments**

The 1955 amendment deleted the second sentence, as the section appeared in the parent volume, providing for an operator's license, and inserted after the sentence providing for a manager-operator's licence three sentences reading: "A manager-operator or teacher of cosmetology who is retired or no longer active in any capacity in a cosmetological establishment or beauty school may obtain an inactive license upon the payment of an annual fee of three (\$3.00) dollars. Every person, firm, co-partnership or corpora-

tion originally opening a cosmetological establishment shall pay the sum of five (\$5.00) dollars for the issuance of the original license. The sum of three (\$3.00) dollars annually shall be paid by each existing cosmetological establishment and for each renewal cosmetological establishment license."

The 1959 amendment restored, as the second sentence in the section, the sentence deleted by the 1955 amendment and deleted the sentences inserted by the 1955 amendment.

**Repealing Clauses**

Section 4 of Ch. 20, Laws 1955 and Sec. 3 of Ch. 140, Laws 1959 repealed all acts and parts of acts in conflict therewith.



**66-817. (3228.17) Prohibited acts—penalties—injunctive relief.** A. It shall be unlawful without an appropriate license issued under the provisions of sections 66-801 through 66-818, Revised Codes of Montana, 1947, as amended to:

1. Practice cosmetology for compensation.
2. Own, manage, operate or conduct a school of cosmetology.
3. Manage or operate a cosmetology shop or beauty parlor.
4. Teach in a school of cosmetology.
5. Practice manicuring.
6. Practice as a finger waver.

B. It is unlawful:

1. For any person who owns, manages or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist.

2. To operate a cosmetology school without complying with all of the regulations of section 66-803, Revised Codes of Montana, 1947.

3. To practice cosmetology in any place other than in a licensed establishment as provided in this chapter except when a licensed operator is requested by a customer to go to a place other than a licensed establishment and is sent to such customer from a licensed establishment.

4. To violate any of the provisions of sections 66-801 through 66-818, Revised Codes of Montana, 1947, as amended.

C. The commission of any of the acts prohibited as provided in subsections A and B hereof or the violation of any other provision in section 66-801 through section 66-818, Revised Codes of Montana, 1947, shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

D. Regardless of any penalties provided in this chapter and as an additional remedy the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

**History:** En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959.

**Amendment**

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

**CHAPTER 10—MEDICINE—REGULATION OF PRACTICE**

Section 66-1003. Examination and qualifications of applicants.

**66-1003. (3118) Examination and qualifications of applicants.** Every person who is an applicant to practice medicine and surgery in the state of Montana shall apply to said board of medical examiners for a certificate so to do. Every person applying shall present his or her diploma to the said board for verification as to its genuineness;

(a) if the diploma is found to be genuine, and is issued by a university, college or school currently approved by the council on medical educa-



tion and hospitals of the American medical association, which fact said board shall determine, and

(b) if the person presenting and claiming said diploma be the person to whom the same was originally granted, said person shall thereupon, submit to an examination at a time and place designated by said board, which may be the time and place of a regular meeting of said board, in and upon each of the following branches of medicine and surgery, to-wit: Anatomy, physiology, materia medica, therapeutics, practice of medicine, surgery, obstetrics, diseases of women and children, diseases of the nervous system, and diseases of the eye and ear. Said board shall cause such examination to be both scientific and practical, and of sufficient breadth, thoroughness and intensity to test the candidate's fitness to practice medicine and surgery. After examination, such board, if the candidate has been found qualified, shall grant a certificate to such candidate to practice medicine and surgery in the state of Montana, which said certificate can be granted only by the consent of not less than four (4) members of said board, and which said certificate shall be signed by the president and signed and attested by the secretary of said board and authenticated by the seal thereof; provided, however, that in all cases where an applicant for a certificate under this section shall produce and exhibit to said board a genuine certificate from a board of medical examiners (however designated by the law of any other state or a Province of Canada) duly appointed and existing under the laws of any state of the United States or a Province of Canada, and which state or Province of Canada through its said board recognizes certificates or licenses issued by the board of medical examiners of Montana, certifying to the facts:

(1) that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state or Province of Canada issuing said certificate, and that said board issuing said certificate has subjected the applicant to a thorough written examination to ascertain this fact, or certifying to the facts;

(2) that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state or Province of Canada issuing said certificate; and to the further fact, if such is the case, that said applicant was exempt from examination under the provisions of the law of said state or a Province of Canada, by reason of his residence in said state or a Province of Canada in the active practice of medicine and surgery at the time of the passage in said state or a Province of Canada of said law requiring the examination of applicants to practice medicine and surgery; and if said board of medical examiners is satisfied and finds that the requirements for admission to the practice of medicine and surgery in such other state or a Province of Canada, past or current, are the equivalent of the Montana requirements; he or she may, in the sound discretion of said board of medical examiners of Montana, upon paying the fee required of applicants for examination under the provisions of section 66-1008, and otherwise complying with all the requirements of the medical practice act of Montana, receive from said board of medical examiners of Montana a certificate to practice medicine and surgery within this state, and upon filing said certificate with the county clerk of the county in

which he resides, as provided in section 66-1005, said person shall be a legally qualified practitioner of medicine and surgery in the state of Montana; provided, however, that the board may, in any case of an applicant for admission by reciprocity, require a full written examination of said applicant. During any period intervening between the regular meetings of said board of medical examiners, any person desiring to practice medicine in this state may present his or her diploma to the president or secretary of said board, who may, upon the concurrence of any four (4) members of the board, issue a temporary certificate to practice, valid only until the next regular meeting of said board.

All physicians and surgeons who hold certificates heretofore granted by the existing board of medical examiners of Montana, or who are now legally entitled to practice medicine and surgery in this state, shall be exempt from the provisions of this section. Licenses or certificates to practice medicine and surgery in the state of Montana shall be issued only to citizens of the United States of America or to subjects of the Dominion of Canada who have filed their declaration of intention to become a United States citizen: provided, however, that the board of medical examiners shall have the power to annul and revoke any license or certificate issued to any physician and surgeon who has filed his declaration of intention to become a United States citizen, and who thereafter fails to become naturalized within the time and manner provided for and prescribed by Congress. The board may, by specific regulation, prescribe and enforce reciprocity requirements current with changes in standards in the practice of medicine and surgery.

**History:** Ap. p. Sec. 602, Pol. C. 1895; amd. Sec. 1, Ch. 13, L. 1903; re-en. Sec. 1587, Rev. C. 1907; re-en. Sec. 3118, R. C. M. 1921; amd. Sec. 2, Ch. 132, L. 1943; amd. Sec. 1, Ch. 119, L. 1957.

#### Amendment

The 1957 amendment inserted the reference to "Province of Canada" each time it appears in this section and in the last

paragraph in the second sentence inserted the words "or to subjects of the Dominion of Canada who have filed their declaration of intention to become a United States citizen" and the proviso clause.

#### Repealing Clause

Section 2 of Ch. 119, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### 66-1007. (3122) Practicing medicine without certificate—penalties.

#### Compiler's Note

The citation to State ex rel. Gilmore v. District Court, 45 M 335, 122 P 922 appearing in the parent volume on page 268 should read State v. Morris, 45 M 334, 122 P 917.

#### Physiotherapy

The practice of physiotherapy consti-

tutes the practice of medicine under Montana law. State v. Bain, 130 M 90, 295 P 2d 241, 243.

Where a person represented himself as Dr. Bain, physiotherapist, there was a violation of this section since physiotherapy is the practice of medicine and the affixing of the word "Dr." was in a medical sense. State v. Bain, 130 M 90, 295 P 2d 241.

## CHAPTER 13—OPTOMETRY—REGULATION

- Section 66-1301. Practice of optometry defined.  
 66-1302. Provisions regulating practice of optometry.  
 66-1305. Examinations—admission to practice—nonresidents.  
 66-1307. Renewal of registration—revocation—fees.  
 66-1311. Compensation of examiners—report.  
 66-1316. Act not to apply to physicians and surgeons.  
 66-1317. Public agencies—discrimination prohibited.

**66-1301. (3155) Practice of optometry defined.** The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

1. The optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied or relieved.

2. The employment of any optometric means, excluding the use of drugs or surgery, for the purpose of detecting any condition of the process of vision, or the effects of any condition of the process of vision, which may have any significance in a complete optometric diagnosis.

3. The application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies excluding the use of drugs or surgery.

**History:** En. Ch. 138, L. 1907; re-en, Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R. C. M. 1921; amd. Sec. 1, Ch. 252, L. 1959.

**Amendment**

The 1959 amendment enlarged upon this section and completely rewrote it. For section prior to amendment see parent volume.

**66-1302. (3156) Provisions regulating practice of optometry.** It shall be unlawful for any person:

1 to 8. \* \* \* [Subdivisions 1 to 8, same as parent volume.]

9. To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided, however, that the provisions hereof shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a duly licensed optometrist and is dispensed only by said optometrist or a person employed by said optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

10. To take or make any measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time of so doing a valid, unrevoked certificate of registration; and any person who shall take or make any measurements or use any mechanical device whatsoever for such purpose or who shall in the sale of spectacles or eye-glasses or lenses use, in the testing of the eyes therefor, lenses other than the lenses actually sold, shall be deemed to be practicing optometry within the meaning thereof; provided, that nothing in this section shall apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

11. To advertise at a price, or any stated terms of such a price, or as being free, any of the following: The examination or treatment of the eyes; the furnishing of optometrical services, or the furnishing of a lens,



lenses, contact lens, contact lenses, glasses, or the frames or fitting thereof.

The provision of this subdivision does not apply to the advertising of goggles, sun-glasses, colored glasses, or occupational eye protective devices, provided the same are so made as not to have refractive values and are not advertised in connection with the practice of optometry or of any professional service.

12. To adapt any lens to direct contiguous contact to the human eyeball without having at the time of so doing a valid, unrevoked certificate as an optometrist.

**History:** En. Ch. 138, L. 1907; re-en, Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1925; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959.

#### Amendment

The 1959 amendment in subd. 9 substituted all of that part beginning with

the words "on an ophthalmic lens" for the words "upon such lenses"; in subd. 10 deleted the words "or oculists" which appeared after the words "qualified optometrists" and substituted the word "laboratory" for "house" at the end thereof; in subd. 11, inserted the words "contact lens, contact lenses," and added subd. 12.

### 66-1305. (3159) Examinations — admission to practice — nonresidents.

1. The board of examiners shall make rules and regulations relative to and governing the qualifications of all applicants for certificates of registration as optometrists not inconsistent with the provisions of this act and if the applicant does not meet the requirements of such rules and regulations, then the applicant will not be eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of such rules and regulations, said applicant, before beginning to practice optometry in this state, must pass an examination given by and conducted before said board of examiners. All examinations shall be practical in character and designated to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The board shall, from time to time, publish and distribute the examination requirements for a certificate to practice optometry in the state of Montana. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

2. No person shall be eligible to take said examination who is not 21 years of age, and who is not a citizen of the United States of America, and who is not of good moral character.

3. On and after July 1st, 1925, no person shall be eligible to take said examination unless he shall have certificates of graduation from an accredited high school and from a school of optometry wherein the practice and science of optometry is taught in a course of study covering eight semesters, or four years, of actual attendance and which school is accredited by the international association of boards of examiners in optometry. In lieu of said certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six years in some other state or states.

4. Every person desiring to be examined in optometry shall file an application in the manner prescribed by said board at least four weeks



before the examination shall be held, and a fee of twenty-five dollars (\$25.00) shall accompany said application.

5. Every person successfully passing said examination shall be registered in the board register, which shall be kept by the secretary of said board, and upon the payment of a fee of ten dollars (\$10.00) shall receive a certificate of registration signed by the members of said board.

6. In case an applicant for a certificate of registration has been admitted to practice optometry in any state, and has secured an average of seventy-five per cent (75%) in his examination in such other state, he may, at the discretion of the said board, be granted a certificate to practice his profession in Montana, without examination, upon his payment of all fees, provided the state from which said applicant comes offers equal privileges to applicants for certificates of registration from this state.

**History:** En. Ch. 138, L. 1907; re-en. Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R. C. M. 1921; amd. Sec. 4, Ch. 171, L. 1925; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959.

#### **Amendment**

The 1959 amendment added the last sentence to subd. 1 and substituted the words "is accredited by" for the words "has a recognized standing with" in subd. 3.

**66-1307. (3161) Renewal of registration — revocation — fees.** Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of twenty dollars (\$20.00) in return for which a renewal of registration shall be issued. The board may use not to exceed ten dollars (\$10.00) from each renewal fee for the purpose of presenting to registered optometrists at least one annual educational program. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety days' notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of twenty-five dollars (\$25.00).

**History:** En. Ch. 138, L. 1907; re-en. Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959.

#### **Amendment**

The 1959 amendment raised the renewal fee from \$10.00 to \$20.00 and added the second sentence.

**66-1311. (3165) Compensation of examiners—report.** Out of the funds coming into the possession of said board, each member thereof may receive as compensation the sum of twenty-five dollars (\$25.00) and necessary expenses for each day actually engaged in the duties of his office. Such sums shall be paid from the fees received by said board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said expenses, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board, and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and the secretary of said board shall make an annual report of its proceedings to the governor on

the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this act.

**History:** En. Ch. 138, L. 1907; re-en. Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R. C. M. 1921; amd. Sec. 5, Ch. 171, L. 1925; amd. Sec. 5, Ch. 252, L. 1959.

**Amendment**

The 1959 amendment raised the compensation of board members from \$15 to \$25.

**66-1316. (3169) Act not to apply to physicians and surgeons.** Nothing in this act shall be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana nor to an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician or surgeon, nor to commissioned officers of the armed forces of the United States performing functions of this act in the line of their regular duty, nor to persons who sell spectacles or eye-glasses without attempting to traffic upon assumed skill in adapting them to the eye.

**History:** En. Ch. 138, L. 1907; re-en. Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R. C. M. 1921; amd. Sec. 6, Ch. 252, L. 1959.

**Amendment**

The 1959 amendment inserted the exceptions relating to opticians and to commissioned officers of the armed forces.

**66-1317. Public agencies—discrimination prohibited.** All agencies of the state and its subdivisions administering relief, public assistance, public welfare assistance, social security health insurance or other health service under the laws of this state shall accept the services of licensed optometrists for any service, covered by their licenses, rendered to any person receiving benefits from said agents or bodies and shall pay for such services in the same manner as other ocular practitioners rendering similar services. None of the said governmental agencies or agents, officials or employees thereof, including the public schools, shall, in the performance of their duties, discriminate in any way among licensed ocular practitioners.

**History:** En. 66-1317 by Sec. 7, Ch. 252, L. 1959.

parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

**Separability Clause**

Section 8 of Ch. 252, Laws 1959 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or

**Repealing Clause**

Section 9 of Ch. 252, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

Section 66-1507. Annual renewal of registration fees.

66-1508. Store license—certified pharmacy license—suspension or revocation.

**66-1507. (3177) Annual renewal of registration fees.** Every person licensed and registered by the board shall annually pay to the board a renewal of registration fee of five dollars (\$5.00). It shall be unlawful for any such person who refuses or fails to pay such renewal fee to practice pharmacy in this state. The practice of pharmacy in the state of Montana is declared a professional practice affecting the public health, safety and

welfare and is subject to regulation and control in the public interest. Every certificate and renewal shall expire at the time prescribed, not later than one (1) year from its date. Any person who has been registered and licensed by the board and has defaulted in the payment of said renewal fee may be reinstated within two (2) years of such default without examination upon payment of the arrears.

**History:** En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R. C. M. 1921; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957.

**Amendment**

The 1957 amendment inserted the third sentence.

**66-1508. Store license—certified pharmacy license—suspension or revocation.** (a) The state board of pharmacy shall upon application upon such forms as it may prescribe and upon the payment of an annual fee of five dollars (\$5.00), license stores other than a pharmacy wherein may be sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state wherein such manufacturer resides. The name and address of such manufacturer shall appear conspicuously on each package sold by such licensee. It shall be unlawful for any such store to sell, deliver or give away such household medicinal drugs, without first having secured such license and thereafter keeping the same in force by proper renewal, provided, also, that nothing herein shall be construed to prevent any vendor from selling any patent or proprietary medicine in the original package when plainly labeled, nor such non medical articles as are usually sold by such vendors.

(b) The state board of pharmacy shall require and provide for the annual registration and licensing of every pharmacy now or hereafter doing business within this state within the meaning of the act. Upon presentation of evidence satisfactory to the board and upon application upon such form as the board may prescribe and upon the payment of an annual fee of five dollars (\$5.00), the board shall license any pharmacy as a "CERTIFIED PHARMACY," provided, however, that such license shall be granted only to such pharmacies as are operated by registered pharmacists or assistant registered pharmacists qualified as herein prescribed. Such license must be exposed in a conspicuous place in the pharmacy for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct such pharmacy unless such license has been duly issued and is in full force and effect.

(c) The board may suspend, revoke or refuse to renew any store or pharmacy license obtained by false representation, or fraud of any character, or when the pharmacy for which the license shall have been issued is kept open for the transaction of business without a pharmacist in charge thereof, or when the person to whom the license shall have been granted has been convicted for violation of any of the provisions of the act or for a felony, or convicted for any violation of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301-392



as from time-to-time revised, amended, and supplemented), or, if a natural person, whose pharmacist or assistant pharmacist license has been revoked, or when the store or pharmacy is conducted in violation of the provisions of this act. Before any license can be revoked the holder thereof shall be entitled to a hearing by the board after reasonable notice, and judicial review of the action of the board.

**History:** En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959.

#### Amendment

The 1959 amendment raised the fee from \$3.00 to \$5.00; deleted the words "pharmacies and" which appeared after the words "(\$3.00), license" and inserted the words "deliver or give away" in the last sentence of subd. (a). In subd. (b)

the amendment substituted the words "and upon application upon such form as the board may prescribe and upon the payment of an annual fee of five dollars (\$5.00), the board shall" for the words "it may" and in subd. (c) the amendment inserted the reference to a conviction under the federal food, drug and cosmetic act.

### 66-1522. Use of words "drug store," "pharmacy," etc.

#### Unconstitutional

Held, that since under sections 66-1508 and 66-1525 a store can sell ordinary household or medicinal drugs, they cannot be deprived of the use of the word "drug" in advertisement under this section since the act makes no requirement that the registered pharmacist who may use the name "drug" and sell the drugs make any analysis, inspection or examination of the drug to be passed on by him to the purchasing public. *Pike v. Porter*, 126 M 482, 253 P 2d 1055, 1056.

The provision excluding those who are not registered pharmacists from the use of the word "drug" in advertising household drugs bears no reasonable relationship to the protection of human life, health or safety but merely discriminates in favor of a certain class and is in consequence unconstitutional and invalid. *Pike v. Porter*, 126 M 482, 253 P 2d 1055, 1057.

## CHAPTER 17—PHOTOGRAPHY—REGULATION

### 66-1701. Photography defined.

#### Unconstitutional

Chapter 37 of Laws 1937 (66-1701 et seq.) known as the Photographic Examiners Act declared unconstitutional as violative of sections 3 and 27 of Article 3 of the Montana Constitution and section 1 of the 14th Amendment to the Constitu-

tion of the United States. *State v. Gleason*, 128 M 485, 277 P 2d 530.

#### References

Cited or applied in *Esterby v. Justice Court of Hellgate Township*, 127 M 1, 256 P 2d 544, 545.

## CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

Section 66-1806. Fee for examination and certificate—re-examination.

**66-1806. (3241.6) Fee for examination and certificate—re-examination.** The university shall be entitled to receive for the examination and certificate, provided for in section 66-1801, a fee of thirty dollars, (\$30.00), payable in advance at the time of making application therefor. Any applicant who shall fail to pass an examination shall be entitled to further examinations within the next two (2) succeeding years following such failure, but at such times only as the board of accountancy shall hold the regular examination, prescribed in section 66-1805. Such applicant shall not be entitled to more than one (1) examination in each year, providing, that for each additional section of each additional examina-



tion, after the failure of such applicant to pass, a fee of five dollars (\$5.00) shall be paid by said applicant for each additional section of each such additional examination.

**History:** En. Sec. 6, Ch. 46, L. 1933; amd. Sec. 1, Ch. 129, L. 1959.

#### **Amendment**

The 1959 amendment increased the examination and certificate fee from \$25 to \$30 and, in the final sentence, substituted "each additional section of each additional examination" and "each additional

section of each such additional examination," respectively, for "each additional examination" and "each additional examination."

#### **Repealing Clause**

Section 2 of Ch. 129, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### **CHAPTER 19—REAL ESTATE BROKERS—REGULATION— REAL ESTATE COMMISSIONER**

Section 66-1903. Real estate broker defined.

66-1910. License—application—bond—issuance—fee.

66-1916. Suspension or revocation—appeal and bond.

66-1917. Power of commissioner concerning hearings, oaths, subpoenas, process and witnesses.

**66-1903. (4058) Real estate broker defined.** A "real estate broker," within the meaning of this act, is a person who for a compensation, or promise thereof, sells or offers for sale, buys or offers to buy, lists or solicits for prospective purchasers, receives or demands an advance fee, negotiates, or offers to negotiate, either directly or indirectly, whether as the employee of another or otherwise, the purchase, sale, exchange of real estate, or any interest therein, for others, as a whole or partial vocation. The word "person" as used in this act, shall be construed to mean and include a corporation. The term "advance fee" as used in this act is a fee contracted for, claimed, demanded, charged, received or collected for a listing, advertisement or offer to sell or lease property in a publication issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, other than a newspaper of general circulation, prior to the printing thereof. The provisions of this act shall not apply to any person who purchases property for his own use or account, nor to any person, who, being the owner of property, sells, exchanges, or otherwise disposes of the same for his own account, nor to any person holding a duly executed power of attorney written in a separate instrument designated as such, from the owner granting power to consummate the sale, exchange or leasing of real estate, nor to the services rendered by an attorney at law for or on behalf of his client, nor to any receiver, trustee in bankruptcy, guardian, administrator, or executor, nor to any person acting under the order of the court, nor to any person selling under a deed of trust.

**History:** En. Sec. 3, Ch. 195, L. 1921; re-en. Sec. 4058, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1933; amd. Sec. 1, Ch. 129, L. 1957.

#### **Amendment**

The 1957 amendment inserted the words "lists or solicits for prospective purchasers, receives or demands an advance fee" in the first sentence; added the third sen-

tence and deleted the words "nor to any person making one single transaction a year" which formerly appeared as the first "nor clause" in the fourth sentence.

#### **Repealing Clause**

Section 2 of Ch. 129, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 129, Laws 1957 provided the act should be in effect from and

after its passage and approval. Approved March 9, 1957.

**66-1910. (4065) License — application — bond — issuance — fee.** Any person, co-partnership, or corporation, desiring to carry on the business of real estate broker in this state shall make application for a license so to do upon a form prescribed by the commissioner, and shall file the same with the commissioner; when an individual makes the application, in the application shall be stated the full name of the applicant, and his business address, which shall be the place where he maintains his home office. The applicant shall file with the application a written recommendation, signed by at least five (5) responsible freeholders of the county in which the home office of the applicant is, in which the freeholders must certify that they believe the applicant to be a man of good moral character, and in their judgment well qualified to carry on the business of real estate broker. The applicant shall also file with his application a good and sufficient bond in the sum of five thousand dollars (\$5,000.00), conditioned that the applicant shall conduct his business as real estate broker in accordance with the requirements of this act, provided that the total aggregate liability of any surety under such bond shall not exceed the face amount of the bond.

When a co-partnership makes application for a license it shall state in the application the full name of all the partners, their business addresses, the place where the principal office shall be maintained, and the commissioner shall require a recommendation, signed by at least five (5) responsible freeholders of the county in which the home office of the co-partnership is, in which the freeholders must certify that they believe that each of the members of said co-partnership is a man of good moral character and in their judgment well qualified to carry on the business of real estate broker. The co-partnership shall also file with their application a good and sufficient bond in the sum of five thousand dollars (\$5,000.00), conditioned that the co-partnership shall conduct their business as real estate brokers in accordance with the requirements of this act.

An unincorporated association shall comply with the rules prescribed for a co-partnership.

When a corporation makes application for a license, it shall state in its application a list of its officers and directors, and their addresses, its principal place of business in this state, which shall be deemed its home office, and the names of the officers for whom a license is asked; the commissioner shall require its filing of a recommendation for each of said officers as in the case of an individual applicant, a good and sufficient bond in the sum of five thousand dollars (\$5,000.00), conditioned that the corporation shall conduct its business as a real estate broker in accordance with the requirements of this act, provided that the total aggregate liability of any surety under such bond shall not exceed the face amount of the bond.

The commissioner may require such other proof as he may deem advisable as to the honesty, truthfulness and good reputation of any applicant for a license, whether an individual or member of a co-partnership or officer of a corporation, before issuing the license; provided, however, that if a real estate broker has once been licensed under this act, upon

his application for a renewal of his license, the commissioner may, in his discretion, waive the filing of new recommendations or references.

Upon the filing of the application, if the same be accompanied with a proper recommendation or recommendations, bond or bonds, and fee hereinafter specified, if the commissioner is satisfied with the showing made, he shall forthwith issue the license, which shall continue thenceforward, unless revoked, until the first day of April next ensuing. If the commissioner shall not be satisfied with the showing made by the applicant, or if the necessary bond or bonds, satisfactory to the commissioner be not given, he may refuse to issue the license, in which case the applicant must appear before the commissioner within the time and manner provided in this act whenever a license application is refused, cancelled, or revoked.

For every real estate broker's license issued, the commissioner shall require, before issuance, a fee of ten dollars (\$10.00), provided, that if a license be taken out after the first day of October, but one-half the fee shall be required, but the license shall expire on the first day of April following, and in case of licenses issued to co-partnerships, unincorporated associations, and corporations, he shall require such fee for each such co-partnership, unincorporated association, or corporation to whom such license is issued.

**History:** En. Sec. 10, Ch. 195, L. 1921; re-en. Sec. 4065, R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1953; amd. Sec. 1, Ch. 130, L. 1957.

#### Amendment

The 1957 amendment substituted the words "must appear before the commissioner within the time and manner provided in this act whenever a license application is refused, cancelled, or revoked" for the words "may appeal to the district court within ten days after notice that his

application has been rejected" in the sixth paragraph.

#### Repealing Clause

Section 2 of Ch. 130, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 130, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

**66-1916. (4071) Suspension or revocation—appeal and bond.** If the commissioner, after a hearing as provided in this act, shall refuse to grant an application for a license or shall cancel or revoke a broker's or salesman's license and the broker or salesman shall feel aggrieved by the decision of the commissioner, he may appeal to the district court of the county in which he has his principal place of business by giving notice of such appeal in writing to the commissioner and filing a bond with the clerk of the district court in the sum of three hundred dollars (\$300.00) to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, said bond and notice to be filed within ten (10) days from the date of the commissioner's decision. The filing of such notice and bond shall supersede the order of the commissioner until the final termination of such appeal. The judge of the court shall summarily hear and determine the questions involved upon said appeal, and shall receive and consider any pertinent evidence whether oral or documentary concerning the matter. If such aggrieved party shall fail to perfect his appeal or file said transcript as herein provided, said stay shall automatically terminate. Appeals from



judgment of the district court may be taken to the supreme court in the same manner as appeals are taken in civil actions.

**History:** En. Sec. 16, Ch. 195, L. 1921; re-en. Sec. 4071, R. C. M. 1921; amd. Sec. 1, Ch. 131, L. 1957.

#### **Amendment**

The 1957 amendment inserted the words "after a hearing as provided in this act" and substituted "cancel" for "suspend" in the first sentence.

#### **Repealing Clause**

Section 2 of Ch. 131, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 131, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

**66-1917. (4072) Power of commissioner concerning hearings, oaths, subpoenas, process and witnesses.** The commissioner shall, before denying the application for a license or before canceling or revoking any license, set the matter down for a hearing and, at least ten (10) days prior to the date set for the hearing, shall notify the applicant or licensee in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or licensee an opportunity to be heard in person or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or licensee, or by mailing it by registered mail to the last known business address of the applicant or licensee. If the applicant or licensee is a salesman the commissioner also shall notify the broker employing him or in whose employ he is about to enter by mailing notice by registered mail to the broker's last known business address. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time. The commissioner shall have power to administer oaths, certify to all official acts and shall have power to subpoena and bring before him any person in this state as a witness, compel the production of books and papers, and take the testimony of any person by deposition in the same manner as is prescribed by law in the procedure of the district courts of this state in civil cases. Process issued by the commissioner shall extend to all parts of the state and may be served by any person authorized to serve process. Each witness who shall appear by order of the commissioner shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases appearing in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commissioner, his fees and mileage shall be paid in the same manner as other expenses of said department are paid.

**History:** En. Sec. 17, Ch. 195, L. 1921; re-en. Sec. 4072, R. C. M. 1921; amd. Sec. 1, Ch. 132, L. 1957.

#### **Amendment**

The 1957 amendment added all that portion of this section from the beginning through the fourth sentence.

#### **Repealing Clause**

Section 2 of Ch. 132, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 132, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.



CHAPTER 20—STOCK-BROKERS AND INVESTMENT  
COMPANIES (BLUE SKY LAW)

- Section 66-2002. Securities defined.  
 66-2003. Securities to which provisions of act not applicable.  
 66-2007. Permit to do business.  
 66-2018. Supervisory control and fees of commissioner.  
 66-2023. False entries or statements—penalty.  
 66-2024. Penalty for violation of act.

**66-2002. (4027) Securities defined.** The term “securities” as used in this act shall be taken to mean shares, bonds, debentures, evidence of indebtedness, certificates of interest or participation, certificates of interest in profit sharing agreement, collateral trust, certificates contracts, diversified trustee shares, fixed investment trusts, selected shares corporations, investment contracts, oil, gas or other mineral lease, right, royalty, or any interest therein, preorganization certificates or subscriptions, or contracts for the performance of personal services or the furnishing of materials in connection with the burial or cremation of dead human bodies which contracts are to be performed at a future time determinable only by the death of the person in connection with whose decease said services are to be performed or materials furnished, contracts or agreements or any other instrument commonly known as a security.

**History:** En. Sec. 1, Ch. 85, L. 1913;  
 re-en. Sec. 4027, R. C. M. 1921; amd. Sec.  
 2, Ch. 179, L. 1929; amd. Sec. 2, Ch. 194,  
 L. 1931; amd. Sec. 1, Ch. 178, L. 1957.

**Amendment**

The 1957 amendment inserted the words  
 “oil, gas or other mineral lease, right,  
 royalty, or any interest therein, preorgan-  
 ization certificates or subscriptions.”

**66-2003. (4028) Securities to which provisions of act not applicable.**  
 The provisions of this act shall not apply to the following securities:

1 to 6. \* \* \* [Subdivisions 1 to 6, same as parent volume.]

7. Securities listed, or approved for listing upon notice of issuance or upon notice of issuance and evidence of satisfactory distribution, upon the New York stock exchange, the Boston stock exchange, the board of trade of the city of Chicago, American stock exchange, Midwest stock exchange, or upon any other stock exchange as to which there may be in effect a written designation by the investment commissioner stating that it is in the public interest that securities listed or approved for listing upon such other exchange be exempt under this subsection, and all securities senior or equal in rank to any securities so listed or approved or represented by subscription rights for any of the foregoing securities or evidence of indebtedness guaranteed by companies, any security of which is so listed or approved, such securities to be exempt only so long as such listing shall remain in effect.

8 and 9. \* \* \* [Subdivisions 8 and 9, same as parent volume.]

10. Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons during any period of twelve (12) consecutive months, if the seller reasonably believes that all the buyers are purchasing for investment.

11. Original subscriptions to stock by those who have signed articles of incorporation as bona fide incorporators, providing said articles of incorporation are not signed by more than fifteen (15) persons and no part of

such original issue of capital stock is taken for the purpose of public distribution.

**History:** En. Sec. 1, Ch. 85, L. 1913; re-en. Sec. 4028, R. C. M. 1921; amd. Sec. 3, Ch. 179, L. 1929; amd. Sec. 2, Ch. 47, L. 1933; amd. Sec. 1, Ch. 120, L. 1937; amd. Sec. 2, Ch. 178, L. 1957.

**Amendment**

The 1957 amendment made numerous changes in subd. 7 for former text of which see parent volume; deleted a former subd. 10 which read "10. Securities of a corporation where the persons holding the same shall not exceed fifty in number" and added new subds. 10 and 11.

**66-2007. (4032) Permit to do business.** It shall be unlawful for any investment company or stock-broker, or any representative thereof, to sell, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatsoever, of any stocks, bonds, or other securities of any kind or character, other than those exempted from the provisions hereof by the definitions herein provided, without a permit from the state investment commissioner as hereinafter provided. No permit under this act shall be issued to any agent or stock-broker who has violated this act or any permit or ruling of the investment commissioner thereunder, or who has been convicted of a felony.

**History:** En. Sec. 5, Ch. 85, L. 1913; re-en. Sec. 4032, R. C. M. 1921; amd. Sec. 3, Ch. 178, L. 1957.

**Amendment**

The 1957 amendment added the second sentence.

**66-2018. (4043) Supervisory control and fees of commissioner.** The investment commissioner shall have general supervision and control, as provided by this act, over any and all investment companies and stock-brokers, domestic or foreign, licensed under this act, and shall have the power to establish such rules and regulations as may be reasonable or necessary to carry out the purposes and provisions of this act, and whenever the investment commissioner shall believe from evidence satisfactory to him that any person, co-partnership, association, or corporation has violated or is about to violate any provisions of this act or any finding, decision, permit, rule, regulation or license made in accordance with the provisions thereof, he may transmit such facts as may be available concerning such violative acts or practices to the attorney general whose duty it shall be to apply to the district court of Lewis and Clark county for an order enjoining such person, co-partnership, association, or corporation from continuing in such violation, or engaging therein or doing any act or acts in furtherance thereof. In said action an order or judgment may be entered awarding such temporary or final injunction as may be proper. All such investment companies or stock-brokers shall be subject to examination by the investment commissioner, or his duly authorized agents or deputies, at any time the investment commissioner may deem it advisable, and in the same manner as is now provided for the examination of state banks. The rights, powers, and privileges of the investment commissioner in connection with such examination shall be the same as is now provided with reference to the examination of state banks. Such investment company or stock-broker shall pay a fee for each examination made by said investment commissioner, or his deputies or agents, of not to exceed ten dollars for each day or fraction thereof, plus the actual traveling

and hotel expenses of said commissioner, or his agent or deputy, that he is absent from the capitol building for the purpose of making such examination, and the failure or refusal of any investment company or stock-broker to pay such fees upon the demand of the investment commissioner, or his deputy or agent, while making such examination, shall work a forfeiture of his or its right to do business in this state.

**History:** En. Sec. 16, Ch. 85, L. 1913; re-en. Sec. 4043, R. C. M. 1921; amd. Sec. 4, Ch. 178, L. 1957.

**Amendment**

The 1957 amendment inserted all that

portion of the first sentence beginning with the words "and shall have the power to establish such rules and regulations \* \* \*"; added the second sentence and capitalized the word "All" to begin the third sentence.

**66-2023. (4048) False entries or statements — penalty.** Any person who shall knowingly or wilfully subscribe to, or make or cause to be made, any false statements or false entry in any book of such investment company or stock-broker, or exhibit any false paper with the intention of deceiving any person authorized to examine into its affairs, or who shall make or publish any false or misleading statements of its financial condition, or of the stocks, bonds, or other securities by it offered for sale, or who, in any application to the commissioner, or in any proceeding before him, or in any examination, audit, or investigation made by him or his authority, knowingly makes any false statement or representation, or who, with knowledge of its falsity, files or causes to be filed in the office of the commissioner any false statement or representation concerning such company or stock-broker or the property which it then holds or proposes to acquire, or concerning its financial condition or other affairs, or concerning its proposed plan of business, or who in connection with any transaction or transactions involving any offer to sell or to buy securities, or any sale or purchase of securities, including any securities exempted under section 66-2003, directly or indirectly, knowingly or wilfully, employs any device, scheme, or artifice to defraud, or makes any untrue statement of material fact, or omits to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engages in any transaction, practice, or course of business which operates or would operate as a fraud or deceit, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than ten thousand dollars, and shall be imprisoned for not less than one year nor more than ten years in the state penitentiary.

**History:** En. Sec. 21, Ch. 85, L. 1913; re-en. Sec. 4048, R. C. M. 1921; amd. Sec. 5, Ch. 178, L. 1957.

**Amendment**

The 1957 amendment inserted all that portion of this section beginning with the

words "or who, in any application to the commissioner" down to and including the words "or course of business which operates or would operate as a fraud or deceit" and raised the minimum penalty from \$200 to \$500.

**66-2024. (4049) Penalty for violation of act.** Any person or persons, agent or agents, investment company, or stock-broker, who shall violate any of the provisions of this act, or who shall knowingly or wilfully, directly or indirectly offer for sale, or negotiate for the sale of or sell, or issue, or cause to be issued any security contrary to the provisions of this



act, or in nonconformity with a permit of the commissioner authorizing the same, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes, if any, specified in such permit, or to any purpose specified in such permit in excess of any amount limited in such permit to be used for such purpose, or who, with knowledge that any security has been issued, in violation of any provision of this act, or regulations thereunder, sells, or offers the same for sale, or who wilfully violates or fails, omits, or neglects to obey, observe, or comply with any order, permit, decision, rule, regulation, demand, or requirement, or any part or provision thereof, of the commissioner under the provisions of this act, or who with one or more other persons conspires to violate any permit or order issued by the commissioner or any of the provisions of this act, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined for each offense not less than five hundred dollars nor more than ten thousand dollars, or shall be imprisoned in the state penitentiary for not less than one year nor more than ten years, or by both such fine and imprisonment.

**History:** En. Sec. 22, Ch. 85, L. 1913;  
re-en. Sec. 4049, R. C. M. 1921; amd. Sec.  
6, Ch. 178, L. 1957.

#### Repealing Clause

Section 7 of Ch. 178, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

#### Effective Date

Section 8 of Ch. 178, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

## CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE

- Section 66-2201. Appointment of state board of veterinary medical examiners.  
 66-2202. Organization of board—quorum—powers.  
 66-2203. Expenses and funds—records and reports.  
 66-2204. Applications for license to practice—examinations—fees.  
 66-2207. Issuance, registration and reinstatement of licenses.  
 66-2208. Display of license and certificate—arrangement with other boards.  
 66-2209. Veterinary medicine defined.  
 66-2210. Refusal, suspension, and revocation of license and certificate.  
 66-2211. Interpretation of statute—persons not embraced within provisions.  
 66-2212. Practice in violation of law—penalties.

**66-2201. (3217) Appointment of state board of veterinary medical examiners.** There is hereby created a state board of veterinary medical examiners, to be appointed by the governor of the state of Montana, which shall consist of five (5) reputable veterinarians who shall have graduated from a college authorized by law to confer degrees and having educational standards equal to those approved by the American veterinary medical association, and each of whom shall be licensed and registered under this act. Appointments shall be made for the term of five (5) years, provided that first appointments made pursuant to this chapter shall be one (1) for one (1) year, expiring on July 31, 1956, and one (1) for four (4) years, expiring on July 31, 1959, and provided, further, that the provisions of this chapter shall not affect or alter the terms of office of the present members of the state board of veterinary examiners which expire respec-



tively on July 31, 1955, July 31, 1957, and July 31, 1958. Members of the board shall serve until their successors are appointed and qualified. The Montana state veterinary medical society shall, at each annual meeting, nominate twice the number of examiners to be appointed that year on the board. The names of such nominees shall be annually transmitted under seal by the president and secretary, prior to July first, to the governor, who shall, prior to August first, appoint from such lists the examiners that will be required to fill any vacancies that will occur from expiration of term on July thirty-first. Any other vacancy, however occurring, shall likewise be filled by the governor for the unexpired term. Each nominee, before appointment, shall furnish to the governor proof that he has received a degree in veterinary medicine from an authorized veterinary medical school, and that he is licensed by the state board of veterinary medical examiners, and that he has actually and legally practiced veterinary medicine in either private practice or public service in the state of Montana for at least five (5) years, immediately preceding his appointment. If no nominees are legally before him from the society, the governor may appoint from licensed and registered members of the veterinary profession in good standing in Montana without restriction. The governor may, after due notice and hearing, remove any examiner for misconduct, incapacity, or neglect of duty.

**History:** En. Sec. 1, Ch. 82, L. 1913;  
re-en. Sec. 3217, R. C. M. 1921; amd. Sec.  
1, Ch. 90, L. 1955.

**Amendment**

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

**66-2202. (3218) Organization of board — quorum — powers.** Every veterinary medical examiner shall receive a certificate of appointment from the governor, and, before beginning his term of office, shall file with the secretary of state the constitutional oath of office. The board shall annually elect from its members a president, vice-president, and secretary-treasurer, and shall hold at least two (2) regular meetings each year. At any meeting three (3) members of the board shall constitute a quorum. If any member of the board shall, without cause, absent himself from two (2) of its regular meetings consecutively, his office shall be deemed vacant. The board is hereby authorized and empowered: to promulgate, revise, alter, and amend and enforce reasonable rules, regulations and orders which it determines in its discretion to be necessary to the performance of its duties; to prescribe forms for application for examination and license; to prepare and supervise examination of applicants for license to practice veterinary medicine; to obtain the services of professional examination agencies in lieu of its own preparation of such examinations; to issue and revoke licenses as hereinafter provided; to hold hearings, issue subpoenas, administer oaths and take testimony and proofs concerning all matters within its jurisdiction; to issue commissions to take depositions of witnesses who are sick or absent from the state; to employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court; to employ attorneys or other qualified

persons to serve as referees in the holding of hearings ordered by the board.

**History:** En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R. C. M. 1921; amd. Sec. 2, Ch. 90, L. 1955.

#### **Amendment**

The 1955 amendment inserted the words "at least" between the words "hold" and "two" in the second sentence; substituted the words "three (3) members of the

board" for "a majority" in the third sentence and substituted the last sentence for two former sentences which read: "The board may take testimony and proofs concerning all matters within its jurisdiction. The board may make all by-laws and rules not inconsistent with law needed in performing its duties."

**66-2203. (3219) Expenses and funds—records and reports.** Each member of the board shall be entitled to receive all necessary traveling and subsistence expenses, provided such expenses shall not exceed the amount in the treasury during any fiscal year. The secretary-treasurer shall receive an additional salary to be fixed annually by the board and not to exceed five hundred dollars (\$500.00) per annum. The board shall require the secretary-treasurer to give bond in such sum and with such conditions as the board may from time to time direct. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements, and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. The secretary-treasurer of said board shall be the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, up to and including the sum of five thousand dollars (\$5,000.00). If, at any time, the amount of moneys received, after deducting such salaries and expenses, shall amount to more than five thousand dollars (\$5,000.00), the secretary-treasurer shall forward the amount in excess of five thousand dollars (\$5,000.00) to the treasurer of the state of Montana, and receive his official receipt for same. Said board shall, not later than July fifteenth of each year, submit to the governor a full and complete report of its proceedings during the twelve (12) months immediately preceding.

**History:** En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921; amd. Sec. 3, Ch. 90, L. 1955.

#### **Amendment**

The 1955 amendment in the first sentence substituted the word "subsistence" for "incidental"; in the second sentence inserted the word "annually" between the words "fixed" and "by" and substituted "five hundred dollars" for "one hundred and fifty dollars"; in the third sentence substituted "The board shall require the

secretary-treasurer to" for "The secretary-treasurer shall"; in the fifth sentence substituted "five thousand dollars" for "one thousand dollars" and after the word "dollars" deleted the words "which shall constitute a trust fund to be used, besides salaries and other expenses of the board, in carrying on prosecutions under the provisions of this act" and in the sixth sentence substituted "five thousand dollars" for "one thousand dollars" and "the amount in excess of five thousand dollars" for "the same."

**66-2204. (3220) Applications for license to practice—examinations—fees.** Any citizen of the United States who is over the age of twenty-one (21) years desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application

shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars (\$25.00), which fee shall in no case be refunded, and which shall become a part of the funds of the treasury of the board. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medica [medica] and therapeutics, livestock sanitation, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legally chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a license without such examination.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars (\$25.00), and shall take another complete examination in all subjects.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to the same person. A temporary permit shall not be issued to a person who has failed an examination given by the board.



History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955.

#### Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

#### 66-2207. (3223) Issuance, registration and reinstatement of licenses.

The state board of veterinary medical examiners will, at the conclusion of a regular examination or after investigation under reciprocity arrangements as provided by section 66-2208, if in their judgment the applicant is duly qualified therefor, issue a license to practice veterinary medicine.

Every license so granted by the board shall be issued under seal, and shall be signed by the president and secretary-treasurer of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and all other matters required by law, and that after full examination or investigation under reciprocity arrangements he or she has been found duly qualified to practice.

Each person licensed by the board to practice veterinary medicine in this state shall procure from the secretary of the board on or before July first, annually, his certificate of registration. Such certificate shall be issued by the secretary upon the payment of a fee to be fixed annually by the board, not exceeding the sum of ten dollars (\$10.00), and certificate so issued shall be prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued. Failure of a person licensed by the board to procure a certificate of registration on or before July first of every year shall ipso facto constitute a forfeiture of the license held by such person, provided, however, that any person who has thus forfeited his license may have it restored to him by making written application for restoration within one (1) year of such forfeiture setting forth the reasons for failure to procure the certificate of registration at the time specified by this section and accompanied by payment of the registration fee hereinabove set forth and such additional restoration fee not to exceed ten dollars (\$10.00) as the board may require. Such person so making application for restoration of license within one (1) year of its forfeiture by him shall not be required to submit to examination.

Notwithstanding any other provisions in this chapter, any person licensed by the board who enters, or is called to active duty by, any branch of the armed services of the United States shall be entitled to receive automatic registration of his license during the period of his duty with the armed services, provided, however, that within one (1) year after release or discharge from duty in such armed services he shall procure a certificate of renewal from the board and pay the regular fee therefor. Failure of such person to procure such certificate of renewal within one (1) year after such release or discharge shall be the equivalent of a failure to procure a certificate of registration on or before July first of any year, and the same forfeiture and restoration requirements shall be invoked.

Each person licensed by the board shall at all times have his residence and office address on file with the board.



**History:** En. Sec. 7, Ch. 82, L. 1913;  
re-en. Sec. 3223, R. C. M. 1921; amd. Sec.  
5, Ch. 90, L. 1955.

**Amendment**

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

**66-2208. (3224) Display of license and certificate—arrangement with other boards.** No person shall practice veterinary medicine in the state of Montana without possessing and displaying prominently in his or her principal office a license and a current and valid certificate of registration issued pursuant to the provisions of this act. The board of veterinary medical examiners may make arrangement with similar boards in the several states insofar as practicable, whereby due credit for state and territorial licenses will be allowed in the state of Montana to such licensees of said board as desire to secure license to practice veterinary medicine in this state, and whereby licensees of the board of veterinary medical examiners in this state will secure due credit for license issued by said board, whenever such licensees desire to secure license to practice in any other state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine in the state of Montana. The board may, if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states. The board shall by regulation establish methods and procedures for investigation of applicants for license by reciprocity, and no license shall be issued as a result of reciprocity between the states to any applicant unless such applicant has been lawfully and continuously in practice as a licensed veterinarian for at least one (1) year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

**History:** En. Sec. 8, Ch. 82, L. 1913;  
re-en. Sec. 3224, R. C. M. 1921; amd. Sec.  
6, Ch. 90, L. 1955.

**Amendment**

The 1955 amendment substituted the first sentence for one which read "Every person practicing veterinary medicine or veterinary surgery in the state of Montana, or representing himself as so practicing, shall display or cause to be dis-

played conspicuously in his or her usual place of business, license or certificate of registration issued to him or pursuant to the provisions of this act"; at the beginning of the second sentence substituted "The board of veterinary medical examiners may" for "The board of examiners shall"; deleted the words "or surgery" which appeared after the words "veterinary medicine" in the second sentence and added the last sentence.

**66-2209. (3225) Veterinary medicine defined.** Any person shall be deemed in the practice of veterinary medicine when he does any of the following:

(a) Represents himself as or is engaged in the practice of veterinary medicine in any of its branches either directly or indirectly.

(b) Uses any words, titles, or letters in such connection or upon any display or advertisement or under any circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) Diagnoses, prescribes or administers any drug, medicine, appliance, application, or treatment of whatever nature, or performs a surgical opera-

tion or manipulation, for the prevention, cure, or relief of a pain, deformity, wound, fracture, or bodily injury or physical condition or disease of animals.

(d) Instructs, demonstrates or solicits, by any notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and any and all remedies for the treatment of internal parasites in animals.

No person shall practice veterinary medicine or veterinary surgery, or farriery, in the state of Montana unless licensed by the state board of veterinary medical examiners of the state of Montana, and registered as required by this chapter; nor shall any person practice veterinary medicine, surgery, or farriery, whose authority to practice is suspended or revoked by said board.

**History:** En. Sec. 9, Ch. 82, L. 1913;  
re-en. Sec. 3225, R. C. M. 1921; amd. Sec.  
7, Ch. 90, L. 1955.

**Amendment**

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

**66-2210. (3226) Refusal, suspension, and revocation of license and certificate.** The state board of veterinary medical examiners may either refuse to issue a license or refuse to issue a certificate of registration or suspend or revoke a license and certificate of registration upon any of the following grounds:

- (a) Fraud or deception in procuring the license.
- (b) The publication or use of any untruthful or improper statement, or representation with the view of deceiving the public, or any client or customer in connection with the practice of veterinary medicine.
- (c) The conviction of a felony as shown by a certified copy of the record of the court of conviction.
- (d) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit forming drugs; or conviction of a violation of any federal or state law relating to narcotic drugs.
- (e) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine.
- (f) Gross malpractice, including failure to furnish to the board, upon written application by it, any report or information relating thereto.
- (g) The employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.
- (h) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates.
- (i) Failure to keep one's premises in a clean and sanitary condition.
- (j) Violation of any of the provisions of this act or of any of the rules, regulations or orders promulgated by the state board of veterinary medical examiners to carry out the provisions of this chapter.
- (k) Revocation by proper authorities for any of the above reasons of a license issued by a sister state.

The board may neither refuse to issue a license or certificate of registration nor suspend or revoke any license and certificate of registration, however, for any such cause, unless the person accused has been given at least twenty (20) days' notice in writing of the charge against him, and a public hearing by the board is first had.

Such hearing shall be held by the board or by a referee appointed by the board; and the board or its duly authorized referee is hereby authorized to administer oaths, subpoena witnesses and compel the production of relevant books and papers and receive evidence in order to carry out the provisions of this act.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R. C. M. 1921; amd. Sec. 8, Ch. 90, L. 1955.

#### Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

**66-2211. (3227) Interpretation of statute—persons not embraced within provisions.** This chapter does not apply to:

(a) Veterinarians in the performance of their official duties, either civil or military, in the service of the United States of America, unless they engage in the practice of veterinary medicine, as defined in this chapter, in a private capacity.

(b) Laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of the state of Montana, or United States of America and engaged in labors in laboratories under the direct supervision of the Montana livestock sanitary board, Montana state college or the United States of America.

(c) Lawfully qualified veterinarians from other states or any foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation.

(d) Any veterinarian residing on a border of a neighboring state and duly authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state, but who does not open an office or appoint a place to meet patients or receive calls within this state, provided that veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state.

(e) The employment of veterinary medical students who have successfully completed three (3) years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees as assistants to veterinarians licensed and registered pursuant to this chapter; provided, however, such employment shall not be contracted for or entered into except after written application for approval directed to the board of veterinary medical examiners and the written grant of approval by said board; and provided, further, such employment shall not be for a period in excess of six (6) months from the date of completion of such third year of study.

The operations known and designated as spaying, castrating or dehorning of large animals shall not be considered the practice of veterinary medicine within the meaning of this chapter.



Nothing in this chapter shall be construed or interpreted to prohibit any person from treating his own farm animals or being assisted in such treatment by his employees regularly employed in the conduct of his business, or by other persons whose services are rendered gratuitously in case of emergency.

Nothing in this chapter shall be construed or interpreted to prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

**History:** En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R. C. M. 1921; amd. Sec. 9, Ch. 90, L. 1955.

#### Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

**66-2212. (3228) Practice in violation of law—penalties.** Any person practicing veterinary medicine or farriery within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter, or after his license to practice has been suspended or revoked, or contrary to the provisions of this chapter in any manner, shall be guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both said fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

**History:** En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R. C. M. 1921; amd. Sec. 10, Ch. 90, L. 1955.

word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

#### Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

#### Separability Clause

Section 11 of Ch. 90, Laws 1955 read "If any section, subdivision, sentence or

#### Repealing Clause

Section 12 of Ch. 90, Laws 1955 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 23—ENGINEERS AND LAND SURVEYORS

- Section 66-2324. Registration required.  
 66-2325. Short title.  
 66-2326. Definitions.  
 66-2327. Board—members—term.  
 66-2328. Board—qualifications.  
 66-2329. Board—compensation and expenses.  
 66-2330. Board—removal of members—vacancies.  
 66-2331. Board—organization—meetings.  
 66-2332. Board—powers.  
 66-2333. Professional engineers' fund—receipts and disbursements—secretary—assistants.  
 66-2334. Records and reports—register.  
 66-2335. Roster.  
 66-2336. Requirements for registration.



- 66-2337. Application for registration—fees.
- 66-2338. Examinations.
- 66-2339. Certificates of registration—seal.
- 66-2340. Expiration and renewals—fee.
- 66-2341. Persons presently registered as civil engineer and/or land surveyor.
- 66-2342. Present professional engineers—persons in military service.
- 66-2343. Engineering plans and specifications for public works.
- 66-2344. Registration of persons registered by other states or authorities.
- 66-2345. Revocation of registration—hearings—re-issuance of certificate—appeals.
- 66-2346. Violations—penalties—enforcement of act.
- 66-2347. Practices to which act inapplicable.

### 66-2301 to 66-2323. Repealed.

#### Repeal

These sections (Secs. 1-23, Ch. 284, L. 1947), relating to the regulation of civil

engineers and land surveyors, were repealed by Sec. 27, Ch. 150, Laws 1957. For new provisions see 66-2324 to 66-2347.

**66-2324. Registration required.** That in order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity, practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and from and after the first day of January, 1958, it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in this act, or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional engineer or a land surveyor, unless such person has been duly registered under the provisions of this act.

**History:** En. Sec. 1, Ch. 150, L. 1957.

#### Title of Act

An act to regulate the practices of engineering and land surveying; to safeguard life, health, and property, and to promote the public welfare; providing for the registration of qualified persons as professional engineers and land surveyors, and providing for the certification of engineers-in-training; defining the terms "engineer," "professional engineer," "engineer-in-training," "practice of engineering," "land surveyor," and "practice of land surveying"; creating a state board of registration for

professional engineers and land surveyors and providing for the appointment of its members; fixing the term of the board; defining its powers and duties; setting forth the minimum qualifications and other requirements for registration; making the administration of this act self supporting by establishing fees with expiration and renewal requirements; exempting certain groups; and providing for the enforcement of this act and penalties for its violation, and repealing sections 66-2301 through 66-2323 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

**66-2325. Short title.** This act shall be known and may be cited as the Montana Professional Engineers' Registration Act.

**History:** En. Sec. 2, Ch. 150, L. 1957.

**66-2326. Definitions.** The term "engineer" as used in this act shall mean a professional engineer as hereinafter defined.

The term "professional engineer" within the meaning and intent of this act shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his legal registration as a professional engineer.

The term "engineer-in-training" as used in this act shall mean a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development or its successor as an agency evaluating professional engineering curricula, or who has had four years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects as provided in section 15 [66-2338] of this act, and who shall have received from the board, as hereinafter defined, a certificate stating that he has successfully passed this portion of the professional examinations.

The term "practice of engineering" within the meaning and intent of this act shall mean any professional service or creative work requiring engineering education, training, and experience and the application of such special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment, or communication lines or signal circuits, or electric power lines or pipelines.

The term "land surveyor" as used in this act shall mean a person who engages in the practice of land surveying as hereinafter defined.

The practice of land surveying within the meaning and intent of this act includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions thereof.

The term "board" as used in this act shall mean the state board of registration for professional engineers and land surveyors provided for by this act.

**History:** En. Sec. 3, Ch. 150, L. 1957.

**66-2327. Board—members—term.** A state board of registration for professional engineers and land surveyors is hereby created whose duty it shall be to administer the provisions of this act. The board shall consist of five professional engineers, who shall be appointed by the governor. No more than two members shall be from the same branch of the profession of engineering. All board members shall have the qualifications required by section 5 [66-2328].

The members of the first board shall be appointed within ninety days after the passage of this act. Two members of the first board shall be members of the previous civil engineer board, and shall serve for one and two year terms respectively. The other appointments to the first board shall be for the terms of three, four, and five years respectively, or until their successors are duly appointed and qualified. Every member of the board shall receive a certificate of his appointment from the governor and before beginning his term of office shall file with the secretary of state his

written oath or affirmation for the faithful discharge of his official duty. Each member of the board first appointed hereunder shall receive a certificate of registration under this act from said board. On the expiration of the term of any member, the governor shall appoint for a term of five years a registered professional engineer, having the qualifications required by section 5 [66-2328], to take the place of the member whose term on said board is about to expire. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified. A member of the board may be appointed to succeed himself.

**History:** En. Sec. 4, Ch. 150, L. 1957.

**66-2328. Board—qualifications.** Each member of the board shall be a citizen of the United States and a resident of this state, and shall have been engaged in the practice of engineering for at least twelve years, and shall have been in responsible charge of important engineering work for at least five years. Responsible charge of engineering teaching may be construed as responsible charge of important engineering work.

**History:** En. Sec. 5, Ch. 150, L. 1957.

**66-2329. Board—compensation and expenses.** Each member of the board shall receive per diem when actually attending to the work of the board or any of its committees and for the time spent in necessary travel. Such per diem shall be fixed by the board in its sound discretion, but it shall not exceed twenty-five dollars (\$25.00) per day. In addition thereto, each member shall be reimbursed for all actual traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this act.

**History:** En. Sec. 6, Ch. 150, L. 1957.

**66-2330. Board—removal of members—vacancies.** The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient cause. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

**History:** En. Sec. 7, Ch. 150, L. 1957.

**66-2331. Board—organization—meetings.** The board shall hold a meeting within thirty days after its members are first appointed, and thereafter shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules and regulations of the board may provide. Notice of all meetings shall be given in such manner as the rules and regulations may provide. The board shall elect annually the following officers: A chairman, a vice-chairman, and a secretary. A quorum of the board shall consist of not less than three members.

**History:** En. Sec. 8, Ch. 150, L. 1957.

**66-2332. Board—powers.** The board shall have the power to adopt and amend all rules and regulations and rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The board shall adopt and have an official seal.



In carrying into effect the provisions of this act, the board, under the hand of its chairman and the seal of the board may subpoena witnesses and compel their attendance, and also may require the production of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court, setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person, requiring his attendance before such authority and there to testify or to produce such books, papers, and documents, as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the said court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court.

History: En. Sec. 9, Ch. 150, L. 1957.

**66-2333. Professional engineers' fund—receipts and disbursements—secretary—assistants.** The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate fund to be known as the "professional engineers' fund." Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrants drawn by the state auditor, upon claims filed and approved as required by law. All moneys in the "professional engineers' fund" are hereby specifically appropriated for the use of the board. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board, and shall be paid out of the "professional engineers' fund." The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 6 [66-2329]. The board may appoint an assistant secretary or executive secretary or may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act, including the expenses of the board's delegates to annual conventions of, and membership dues to, the national council of state boards of engineering examiners. Under no circumstances shall the total amount of warrants issued by the state auditor in payment of the expenses and compensation provided for in this act exceed the amount of the examination and registration fees collected as herein provided.

History: En. Sec. 10, Ch. 150, L. 1957.

**66-2334. Records and reports—register.** The board shall keep a record of its proceedings and a register of all applicants for registration, which register shall show (a) the name, age, and residence of each applicant; (b) the date of the application; (c) the place of business of such ap-



plicant; (d) his educational and other qualifications; (e) the branch or branches of engineering in which the applicant qualified; (f) whether or not an examination was required; (g) whether the applicant was rejected; (h) whether a certificate of registration was granted; (i) the date of the action of the board; and (j) such other information as may be deemed necessary by the board.

The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

Annually, as of June 30, the board shall submit to the governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the board, attested by affidavits of its chairman and its secretary.

**History:** En. Sec. 11, Ch. 150, L. 1957.

**66-2335. Roster.** A roster showing the names and places of business of all registered professional engineers and all registered land surveyors shall be published by the secretary of the board during the month of April of each year. Copies of this roster shall be mailed to each person so registered, placed on file with the secretary of state, the clerk of each incorporated city and town and in the office of each county clerk and recorder within the state, and furnished to the public upon request.

**History:** En. Sec. 12, Ch. 150, L. 1957.

**66-2336. Requirements for registration.** The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, or land surveyor, or for certification as an engineer-in-training, respectively:

(1) As a professional engineer:

a.—Graduation in an approved engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula; and a specific record of an additional four years or more of experience in engineering work of a character satisfactory to the board, and indicating that the applicant is competent to practice engineering (in counting years of experience, the board at its discretion may give credit, not in excess of one year, for satisfactory graduate study in engineering), and by successfully passing an oral or written examination, or both, as the board may determine; or

b.—A specific record of eight years or more of experience in engineering work of a character satisfactory to the board, and successfully passing a written, or written and oral, examination designated to show that the applicant is competent to practice engineering; or

c.—A specific record of twelve years or more of lawful practice in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering and has had responsible charge of important professional engineering work for at least five years, and provided applicant is not less than thirty-five years of age.

(2) As an engineer-in-training:

a.—Graduation in an accredited engineering curriculum of four scholastic years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula, and successfully passing a written examination in the basic engineering subjects; or

b.—A specific record of four years or more of experience in engineering work of a character satisfactory to the board, and successfully passing a written examination in the basic engineering subjects.

(3) As a land surveyor:

a.—Graduation from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula, including the completion of an approved course in surveying; and an additional two years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying; or

b.—A specific record of six years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written, or written and oral, examination in surveying prescribed by the board; or

c.—A specific record of ten years or more of lawful practice in land surveying work of a character satisfactory to the board and provided applicant is not less than thirty years of age.

No person shall be eligible for registration as a professional engineer, or land surveyor, or certification as an engineer-in-training, who is not of good character and reputation.

In considering the qualifications of applicants, engineering teaching may be construed as engineering experience.

The satisfactory completion of each year of an approved curriculum in engineering in a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula, without graduation, shall be considered as equivalent to a year of experience in section 13 (1) b and (2) b [this section]. Graduation in a curriculum other than engineering from a college or university of recognized standing may be considered as equivalent to two years of experience in section 13 (1) and (2) b [this section]; provided, however, that no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not in itself be deemed to be qualifying engineering experience.

Any person having the necessary qualifications prescribed in this act to entitle him to registration shall be eligible for such registration although

he may not be practicing his profession at the time of making his application.

**History:** En. Sec. 13, Ch. 150, L. 1957.

**66-2337. Application for registration—fees.** Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be twenty dollars (\$20.00), ten dollars (\$10.00) of which shall accompany application, the remaining ten dollars (\$10.00) to be paid upon issuance of certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be ten dollars (\$10.00).

The fee for engineer-in-training shall be ten dollars (\$10.00), which shall accompany the application and shall include the cost of examination and issuance of certificate. When certification as an engineer-in-training by another state, or any territory or possession of the United States, or of any country, is accepted as evidence of qualification, the fee for engineer-in-training in Montana shall be one dollar (\$1.00). When registration as a professional engineer is completed by an engineer-in-training, an additional fee of ten dollars (\$10.00) shall be paid before issuance of certificate as a professional engineer.

The registration fee for land surveyors shall be ten dollars (\$10.00), which shall accompany the application. The fee for registration as both a professional engineer and land surveyor shall be thirty dollars (\$30.00), ten dollars (\$10.00) of which shall accompany the application, the remaining twenty dollars (\$20.00) to be paid upon issuance of certificate.

Should the board deny the issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee.

**History:** En. Sec. 14, Ch. 150, L. 1957.

**66-2338. Examinations.** When oral or written examinations are required, they shall be held at such time and place as the board shall determine. When examinations are required on fundamental engineering subjects (such as are ordinarily given in college curricula), the applicant shall be permitted to take this part of the professional examination prior to his completion of the requisite years of experience in engineering work, and satisfactory passage of this portion of the professional examination by the applicant shall constitute a credit for a period of ten years. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that he has passed the examination and that his name has been recorded as an engineer-in-training.

The scope of the examinations and the methods of procedure shall be prescribed by the board but, with special reference to the applicant's abil-



ity to design and supervise engineering works, so as to insure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing on examination may apply for re-examination at the expiration of six months and will be re-examined without payment of additional fee. Subsequent examinations will be granted upon payment of a fee to be determined by the board.

**History:** En. Sec. 15, Ch. 150, L. 1957.

**66-2339. Certificates of registration—seal.** The board shall issue a certificate of registration, upon payment of registration fee as provided for in this act, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this act. In the case of a registered engineer, the certificate shall authorize the "practice of engineering." In the case of an engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training." In the case of a registered land surveyor, the certificate shall authorize the "practice of land surveying." Certificates of registration and certificates as engineer-in-training shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman, and the secretary of the board under seal of the board.

The issuance of a certificate of registration by this board shall be prima facie evidence that the person named therein is subject to the responsibilities and entitled to all the rights and privileges of a registered professional engineer or of a registered land surveyor, while the said certificate remains unrevoked or unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "Registered Professional Engineer," and/or "Registered Land Surveyor." Plans, specifications, plats, and reports prepared by a registrant shall be stamped with the said seal when filed with public authorities, during the life of the registrant's certificate, but it shall be unlawful for any one to stamp or seal any documents with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

**History:** En. Sec. 16, Ch. 150, L. 1957.

**66-2340. Expiration and renewals—fee.** Certificates of registration shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed; provided, however, that certificates issued after the effective date of this act and prior to January 1, 1958, shall expire December 31, 1958. It shall be the duty of the secretary of the board to notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of five dollars (\$5.00) for



either a professional engineer or land surveyor, or both. The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten per cent for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

**History:** En. Sec. 17, Ch. 150, L. 1957.

**66-2341. Persons presently registered as civil engineer and/or land surveyor.** No person who heretofore has been duly registered as a civil engineer and/or land surveyor under the laws of Montana and whose registration has not been revoked shall be required to register again under this act, and his former registration shall be fully recognized under the provisions of this act. All certificates including those for engineer-in-training heretofore issued and not revoked shall have the same force and effect as if they had been issued under the provisions of this act, and shall be subject to the same rules, terms and conditions as are the certificates provided for in this act.

**History:** En. Sec. 18, Ch. 150, L. 1957.

**66-2342. Present professional engineers—persons in military service.** At any time within one year after this act becomes effective, upon application therefor and the payment of the registration fee of twenty dollars (\$20.00), the board shall issue a certificate of registration, without oral or written examination, to any professional engineer, who shall submit evidence under oath satisfactory to the board that he is of good character, has been a resident of the state of Montana for at least one year immediately preceding the date of his application; and was practicing engineering in a branch of engineering other than civil engineering and land surveying, as defined in section 66-2303 of the Revised Codes of Montana, 1947, at the time this act became effective, and was performing engineering work of a character satisfactory to the board.

The board at its discretion may require applicants under this section to appear for personal interview.

After this act shall have been in effect one year, the board shall issue certificates of registration only as provided for in section 13 [66-2336] or section 22 [66-2345] hereof, except for individuals who are in the military service of the United States at the time this act becomes effective who were residents of this state at the time of entering such service, and who were practicing engineering immediately preceding or during said service, and have performed work of a character satisfactory to the board, for whom the provisions of this section shall apply at any time within one year after their respective honorable separations from said service.

Graduates of an approved engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula; who are in the military

service of the United States at the time this act becomes effective, shall be certified as engineers-in-training without examination, upon application therefor and payment of the fee of ten dollars (\$10.00) at any time within one year after honorable separation from such service.

For civil engineers or land surveyors the preceding applies, except that such individuals shall have been in the military service of the United States as of July 1, 1948, as was provided in section 66-2318, Revised Codes of Montana, 1947.

**History:** En. Sec. 19, Ch. 150, L. 1957.

**66-2343. Engineering plans and specifications for public works.** All engineering plans and specifications for public works of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the engineer responsible therefor.

**History:** En. Sec. 20, Ch. 150, L. 1957.

**66-2344. Registration of persons registered by other states or authorities.** The board may, upon application therefor, and the payment of a fee of ten dollars (\$10.00), issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the national council of state boards of engineering examiners, or of the national bureau of engineering registration, or of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of this act and the rules established by the board.

**History:** En. Sec. 21, Ch. 150, L. 1957.

**66-2345. Revocation of registration—hearings—re-issuance of certificate—appeals.** The board shall have the power to revoke the certificate of registration of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing, and shall be sworn to by the person making them and shall be filed with the secretary of the board.

All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three months after the date on which they shall have been preferred.

The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such registrant, at least thirty days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defense.

If, after such hearing, three or more members of the board vote in favor of finding the accused guilty, the board shall revoke the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it may deem sufficient, may re-issue a certificate of registration to any person whose certificate has been revoked, providing three or more members of the board vote in favor of such re-issuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the board, and a charge of three dollars (\$3.00) shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the district court of the county in which such denial or revocation was made, and, after full hearing, said court shall make such decree sustaining or reversing the action of the board as to it may seem just and proper.

**History:** En. Sec. 22, Ch. 150, L. 1957.

**66-2346. Violations—penalties—enforcement of act.** Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of this act, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or revoked certificate of registration, or any person who shall violate any of the provisions of this act, shall be guilty of misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or suffer imprisonment for a period not exceeding three months, or both.

It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of this act and to prosecute any persons violating same. The attorney general of the state or his assistant shall act as legal adviser of the board and render such legal assistance as may be necessary in carrying out the provisions of this act.

**History:** En. Sec. 23, Ch. 150, L. 1957.

**66-2347. Practices to which act inapplicable.** This act shall not be construed to prevent or to affect:

- (a) The practice of any other legally recognized professions or trades.
- (b) The mere execution of work by a contractor as distinguished from the planning or design thereof, or the supervision of the construction of such work as a foreman or superintendent; or
- (c) The practice of a person not a resident of and having no established place of business in this state, practicing or offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year; provided such person is legally qualified by registration to prac-



tice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act; or

(d) The practice of a person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice engineering or land surveying herein for more than thirty days in any calendar year, if he shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this act; provided that such a person is legally qualified by registration to practice engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act. Such practice shall continue only for such time as the board requires for the consideration of the application for registration; or

(e) The performance of professional engineering functions or work by a person who is an employee of or acts under the supervision and direction of a professional engineer, provided such person is not in responsible charge of such engineering work; or

(f) The practice of professional engineering by licensed architects where such practice is purely incidental to their practice of architecture, or

(g) The practice of officers and employees of the government of the United States while engaged within this state in the practice of engineering or land surveying; for said government, or

(h) The practice of professional engineering or land surveying in this state by a firm, co-partnership, corporation or joint stock association, or by its members, officers or employees on its behalf, provided each person in responsible charge of activities of the firm, co-partnership, corporation or joint stock association which constitutes such practice is a professional engineer or land surveyor respectively, holding a certificate of registration under this act.

**History:** En. Sec. 24, Ch. 150, L. 1957.

#### **Separability Clause**

Section 25 of Ch. 150, Laws 1957 read "If any section or sections of this act shall be declared unconstitutional or invalid, this shall not invalidate any other sections of this act."

#### **Repealing Clause**

Section 26 of Ch. 150, Laws 1957 repealed all acts and parts of acts in conflict with this act.

#### **Repealing and Savings Clause**

Section 27 of Ch. 150, Laws 1957 read "Sections 66-2301 through 66-2323, Revised Codes of Montana, 1947, originating as chapter 284, Laws of the Thirtieth Legis-

lative Assembly, 1947, shall be, and the same are repealed; provided, however, that this repeal shall not terminate or in any respect invalidate any licenses or certificates in full force and effect at the date this act becomes effective, and continued in full force and effect by the provisions of section 18 of this act."

#### **Transfer of Funds**

Section 28 of Ch. 150, Laws 1957 read "The balance of the money in the state treasury in the civil engineers' fund, as was provided for in section 66-2310, Revised Codes of Montana, 1947, shall upon the effective date of this act be transferred to the professional engineers' fund as provided in section 10 of this act."



## CHAPTER 24—PLUMBERS

- Section 66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants.
- 66-2412. Declaration of public interest.
- 66-2413. Board of plumbing examiners to constitute state plumbing board.
- 66-2414. Rules and records of board—chairman—employees.
- 66-2415. Act not to require employment of licensed plumbers.
- 66-2416. Minimum standards—state plumbing code—fee for copy of code.
- 66-2417. District court—jurisdiction—restraining orders.
- 66-2418. Expenses—defraying.
- 66-2419. Revocation or suspension of license for work below minimum standards.
- 66-2420. Revocation or suspension—initiation of proceedings—procedure.
- 66-2421. Process and proof of service—appearance of accused.
- 66-2422. Hearing on revocation or suspension of license—procedure—subpoenas.
- 66-2423. Judicial review of revocation or suspension—jurisdiction.
- 66-2424. Municipal ordinances for plumbing standards—authority.
- 66-2425. Effective date of state plumbing code.
- 66-2426. Exceptions from act.

**66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants.** Within sixty days after this act becomes a law, the governor of the state of Montana shall appoint a board of plumbing examiners consisting of five members—one master plumber, one journeyman plumber, who shall be of legal age, residents of Montana for more than one year and shall have been at least five out of the last eight years, immediately preceding their appointment, duly licensed master or journeymen plumbers, one registered professional engineer, qualified in mechanical engineering, one member to be appointed at large as representative of the public who is not engaged in the business of installing or selling plumbing equipment, and the director of the division of sanitary engineering of the Montana state board of health, or his duly designated representative, who shall be an ex officio member and secretary of the state board of plumbing examiners. The office of the director of the division of sanitary engineering of the state board of health shall act as the office through which all business of the board shall be transacted. The appointed members of this board of plumbing examiners shall serve for a period of four years from the date of their appointment, providing however, the first board of plumbing examiners shall serve as follows: one member for one year, one member for two years, one member for three years and one member for four years and the governor in making the appointment shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board of plumbing examiners or when a vacancy occurs, the governor shall make a new appointment for the unexpired term or for a period of four years. The journeyman plumber whose term would next expire after passage and approval of this act is hereby removed from said board and in his place and stead shall be installed said registered professional engineer, qualified in mechanical engineering. The members of the said board shall be entitled to a compensation of ten dollars per diem, each, for each and every day while actually engaged in the work of the board, the compensation, however, to be paid from the revenues realized under the provisions of this act,

but not otherwise. Any applicant for a state license to work at the business of plumbing in this state shall be examined as to his qualifications by the board of examiners of plumbers for the state of Montana. It shall be the duty of the said board to examine each applicant for a state license as provided for in this act, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a state license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of a master plumber or journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in the state of Montana.

**History:** En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959.

#### **Amendment**

The 1959 amendment changed the composition of the board of plumbing examiners by requiring only one journeyman plumber, instead of two, and adding a registered professional engineer qualified in

mechanical engineering. The amendment also added the fifth sentence in this section.

#### **Repealing Clause**

Section 17 of Ch. 251, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**66-2412. Declaration of public interest.** It is hereby declared that the public health and welfare require that minimum standards for the planning, installing, altering, extending, repairing and maintaining of plumbing systems be established for the protection of the people of the state.

**History:** En. Sec. 1, Ch. 251, L. 1959.

#### **Title of Act**

An act to promote and protect the public health through the regulation of the business of plumbing; creating a state plumbing board and empowering said board and state board of health to adopt a state plumbing code covering the practice of plumbing and establishing minimum standards for plumbing work; pro-

viding concurrent authority for cities and towns; fixing penalties; providing for an effective date of said plumbing code; to amend section 66-2403, Revised Codes of Montana, 1947, relating to members on the state board of plumbing examiners, by removing one (1) journeyman plumber and substituting in his place and stead one (1) registered professional engineer, qualified in mechanical engineering; and providing for a repealing clause.

**66-2413. Board of plumbing examiners to constitute state plumbing board.** The board of plumbing examiners shall also constitute and be the state plumbing board which is hereby vested with the powers and duties hereinafter enumerated.

**History:** En. Sec. 2, Ch. 251, L. 1959.

**66-2414. Rules and records of board — chairman — employees.** The board shall adopt rules for the transaction of its business and shall keep a record of its official actions. It shall annually select a chairman from its members. The board may employ a secretary who need not be a member of the board and such other persons as may be necessary for its work.

**History:** En. Sec. 3, Ch. 251, L. 1959.

**66-2415. Act not to require employment of licensed plumbers.** Nothing in this act shall be construed as requiring that licensed plumbers be employed in the performance of any plumbing work.

**History:** En. Sec. 4, Ch. 251, L. 1959.

**66-2416. Minimum standards—state plumbing code—fee for copy of code.** The state plumbing board shall, by regulation, prescribe minimum standards which shall be uniform and which standards shall thereafter be effective for all new plumbing installations; such regulations shall contain the minimum requirements for plumbing as set forth in the American standard national plumbing code, numbered ASA A40.8-1955, and published by the American society of mechanical engineers. Such regulations, upon approval of the state board of health and the attorney general and their legal publication, shall be the state plumbing code and shall have the force of law. A copy of the code shall be supplied to each person licensed under the provisions of Title 66, chapter 24 [66-2401 to 66-2411] of the laws of the state of Montana, or any other interested person, for a fee of no more than five dollars (\$5.00).

**History:** En. Sec. 5, Ch. 251, L. 1959.

**66-2417. District court—jurisdiction—restraining orders.** The district court of any county of the state shall have jurisdiction in equity, upon application of said state plumbing board or said state board of health, to enforce this act and to restrain from connection any new plumbing installations, upon finding, after hearing thereupon, that said plumbing is inferior to the standards of said state plumbing code.

**History:** En. Sec. 6, Ch. 251, L. 1959.

**66-2418. Expenses—defraying.** Any moneys paid for state license fees for state plumber licenses, as provided for in Title 66, chapter 24 [66-2401 to 66-2411] of the laws of the state of Montana, may be applied in defraying the expense of the board in carrying out the provisions of this act.

**History:** En. Sec. 7, Ch. 251, L. 1959.

**66-2419. Revocation or suspension of license for work below minimum standards.** Any person, firm, or corporation licensed under the provisions of Title 66, chapter 24 [66-2401 to 66-2411] of the laws of the state of Montana who performs plumbing work in any building whatsoever, below the minimum basic standards for plumbing as set forth in said state plumbing code shall have their license revoked or suspended by the state plumbing board.

**History:** En. Sec. 8, Ch. 251, L. 1959.

**66-2420. Revocation or suspension — initiation of proceedings — procedure.** Proceedings for the revocation or suspension of a plumber's license may be taken by the board upon its initial motion, for matters within its knowledge, or may be taken upon the information of another. All accusations must be in writing, verified by some party familiar with the facts therein charged, and three copies thereof must be filed with the secretary of the board. Upon receiving the accusation the board shall, if



it deem the accusation sufficient, make an order setting the same for hearing, and requiring the accused to appear and answer such charge or accusation at said hearing, at a specified time and place in the county wherein the alleged violation occurred, and the secretary shall cause a true copy of said order of the board and of the accusation or charge to be served upon the accused at least ten (10) days before the day appointed in the order for said hearing.

**History:** En. Sec. 9, Ch. 251, L. 1959.

**66-2421. Process and proof of service—appearance of accused.** Process issued by the board, and proof of service shall be made as provided in civil cases in courts of record and shall be filed with the secretary of the board. The accused must appear at the time appointed in the order and answer the charges and make his defense to the same, unless for sufficient cause, upon the accused's application or the board's order, the board assign another day for that purpose.

**History:** En. Sec. 10, Ch. 251, L. 1959.

**66-2422. Hearing on revocation or suspension of license—procedure—subpoenas.** If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused confess the accusation or refuse to answer the charge, or upon the hearing thereof, the board shall find the charge or accusation (whether one or more) true, it may proceed to an order either revoking the license of the accused or suspending it for a fixed period. The board and the accused may have the benefit of counsel, and the board shall have the power to administer oaths, take depositions of witnesses in the manner provided by law in civil cases, and to issue subpoenas for the attendance of witnesses and the producing of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Such subpoena shall be issued over the signature of the secretary of the board and in the name of the state of Montana.

**History:** En. Sec. 11, Ch. 251, L. 1959.

**66-2423. Judicial review of revocation or suspension—jurisdiction.** In case of revocation or suspension of a license by said board, the licensee whose license shall have been revoked by said board, shall have the right to judicial review of said revocation or suspension by commencing proper proceedings therefore within thirty (30) days of the filing of the order of cancellation or revocation of said license. Such review shall be in the district court in and for the county in which was held the meeting of the board in which such order of revocation or suspension was made.

**History:** En. Sec. 12, Ch. 251, L. 1959.

**66-2424. Municipal ordinances for plumbing standards—authority.** Any municipality of the state of Montana may by ordinance adopt rules and regulations governing plumbing, drainage and ventilation of plumbing within its corporate limits, but the standards provided for therein shall not be less nor lower than the minimum standards provided for them in the state plumbing code.

**History:** En. Sec. 13, Ch. 251, L. 1959.



**66-2425. Effective date of state plumbing code.** The state plumbing code shall be in full force and effect thirty (30) days after the mailing by said board of a copy of the state plumbing code to each person holding a license under the provisions of Title 66, chapter 24 [66-2401 to 66-2411] of the laws of the state of Montana; provided, however, said code shall be mailed not later than the first day of August 1959.

**History:** En. Sec. 14, Ch. 251, L. 1959.

**66-2426. Exceptions from act.** This act shall not be construed to apply to, or to affect, plumbing installations in any mines, mills, smelters, refineries, reduction works, public utilities, manufacturing industries, or plumbing installations on farms having their own individual water supply or sewage disposal system.

**History:** En. Sec. 15, Ch. 251, L. 1959.

## TITLE 67—PROPERTY

Chapter 4. Conditions and limitations of ownership, 67-406, 67-407, 67-413, 67-423, 67-424.

10. Alien land law—Unconstitutional.

18. Uniform gifts to minors act, 67-1801 to 67-1811.

19. Principal and income act, 67-1901 to 67-1916.

### CHAPTER 2—DEFINITIONS AND NATURE OF PROPERTY

#### 67-211. (6671) Appurtenances.

##### References

Cited or applied in *Yegen v. Cardwell*, 133 M 236, 321 P 2d 1077, 1079.

### CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

#### 67-302. (6674) Property of the state.

##### Compiler's Note

The official to the citation of *United States v. Eldredge*, 23 F Supp 337, 339

appearing in the parent volume on page 384 should read 33 F Supp 337, 339.

#### 67-307. (6679) Ownership of several persons.

##### Joint Tenancy and Right of Survivorship

A conveyance to persons in joint tenancy carries with it the common law right of survivorship since the legislature did

not abrogate the common law right of survivorship as an incidence of joint tenancy. *Hennigh v. Hennigh*, 131 M 372, 309 P 2d 1022, 1024.

#### 67-308. (6680) Joint interest defined.

##### References

Cited in *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 845.

##### Joint Tenancy and Right of Survivorship

A conveyance to persons in joint ten-

ancy carries with it the common law right of survivorship since the legislature did not abrogate the common law right of survivorship as an incidence of joint tenancy. *Hennigh v. Hennigh*, 131 M 372, 309 P 2d 1022, 1024.

#### 67-310. Right of survivorship in certain conveyances recognized.

##### Effect

The effect of this enactment was to provide that the right of survivorship exists in those classes of conveyances covered by it, whether made to joint tenants or to tenants in estates by entirety, but does not purport to exclude the right of survivorship in other types of conveyances. *Hennigh v. Hennigh*, 131 M 372, 309 P 2d 1022, 1024.

##### Right of Survivorship in Joint Tenancy

A conveyance to persons in joint tenancy carries with it the right of survivorship since none of the legislative enactments abrogated the common law right of survivorship as an incidence of joint tenancy. *Hennigh v. Hennigh*, 131 M 372, 309 P 2d 1022, 1024.

#### 67-313. (6683) What interests are in common.

##### Joint Tenancy and Right to Survivorship

By this section the legislature recognized the difference between joint interests and interests in common and left people free to contract in either manner. A

joint tenancy is a joint interest and the legislature did not abrogate the common law right of survivorship incident to a joint tenancy. *Hennigh v. Hennigh*, 131 M 372, 309 P 2d 1022, 1024.

## CHAPTER 4—CONDITIONS AND LIMITATIONS OF OWNERSHIP

- Section 67-406. How long it may be suspended.  
 67-407. Future interests suspending power of alienation void.  
 67-413. Other directions—when void in part.  
 67-423. Pension trusts—inapplicability of statutory and common law limitations.  
 67-424. Validity of pension trusts.

**67-405. (6704) Conditions restraining alienation void.****Operation and Effect**

Where there was added to a printed warranty deed the typewritten statement that the grantees agreed not to sell or dispose of the land except to the grantors or

their heirs, the typewritten words violated this section, and did not limit the interest conveyed to a life estate. In *re Vincent's Estate*, 133 M 424, 324 P 2d 403, 411.

**67-406. (6705) How long it may be suspended.** (a) The absolute power of alienation cannot be suspended by any limitation or condition whatever, for a period longer than twenty-one (21) years after some life in being at the creation of the interest and any period of gestation involved in the situation to which the limitation applies. The lives selected to govern the time of suspension must not be so numerous or so situated that evidence of their deaths is likely to be unreasonably difficult to obtain.

(b) When interest must vest. No interest in real or personal property shall be good unless it must vest not later than twenty-one (21) years after some life in being at the creation of the interest and any period of gestation involved in the situation to which the limitation applies. The lives selected to govern the time of vesting must not be so numerous nor so situated that evidence of their deaths is likely to be unreasonably difficult to obtain. It is intended by the enactment of this statute to make effective in this state the American common law rule against perpetuities.

**History:** En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R. C. M. 1921; amd. Sec. 1, Ch. 213, L. 1959. Cal Civ. C. Sec. 715. Based on Field Civ. C. Sec. 201.

**Amendment**

The 1959 amendment designated the previous text as subd. (a); substituted the

latter part of subd. (a), beginning with the words "for a period longer than" and including the entire second sentence, for a clause reading "for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 67-513," and added subd. (b).

**67-407. (6706) Future interests suspending power of alienation void.** Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed. The period of time during which an interest is destructible pursuant to the uncontrolled volition and for the exclusive personal benefit of the person having such a power of destruction is not to be included in determining the existence of a suspension of the absolute power of alienation or the permissible period for the vesting of an interest within the rule against perpetuities.

**History:** En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R. C. M. 1921; amd. Sec. 2, Ch. 213, L. 1959. Cal Civ C. Sec. 716. Field Civ. C. Sec. 202.

**Amendment**

The 1959 amendment added the third sentence.

**Repealing Clause**

Section 3 of Ch. 213, Laws 1959 read "All acts or parts of acts in conflict herewith are hereby repealed, including specifically sections 67-422, 67-513, 67-515, 67-516, 67-517 and 67-518, Revised Codes of Montana, 1947."

**67-413. (6712) Other directions—when void in part.** If the direction for an accumulation of the income of property is for a longer term than is limited in the last section (section 67-412, Revised Codes of Montana, 1947), the direction only, whether separable or not from the other provisions of the instrument, is void as respects the time beyond the limit prescribed in said last section, and no other part of such instrument is affected by the void portion of such direction.

**History:** En. Sec. 1163, Civ. C. 1895; re-en. Sec. 4470, Rev. C. 1907; re-en. Sec. 6712, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1957. Cal Civ. C. Sec. 725. Field Civ. C. Sec. 207.

**Amendment**

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

**Repealing Clause**

Section 2 of Ch. 144, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 144, Laws 1957, provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

**67-422. (6721) Repealed.**

**Repeal**

This section (Sec. 1191, Civ. C. 1895), relating to the time of creation of a limitation, condition, or future interest, was repealed by Sec. 3, Ch. 213, Laws 1959.

**67-423. Pension trusts—inapplicability of statutory and common law limitations.** No statutory or common law rule or provision relating to restraints against alienation, suspension of the power of alienation, accumulations of income, perpetuities or remoteness of vesting shall apply to any trust heretofore or hereafter created as part of a pension, retirement, insurance, savings, stock bonus, profit-sharing or similar plan established or maintained for the benefit of employees, eligible to participate in such plan, of an employer or of a group of employers, or for the benefit of the members, eligible to participate in such plan, of any labor union or of any other association or group of employees, or for the benefit of other beneficiaries eligible to participate in such plan.

**History:** En. Sec. 1, Ch. 214, L. 1959.

**Title of Act**

An act to provide that no statutory or common law rule or provision relating to restraints against alienation, suspension of the power of alienation, accumulations

of income, perpetuities or remoteness of vesting shall apply to trusts which are part of a pension, retirement, insurance, savings, stock bonus, profit-sharing or similar plan, and repealing all acts or parts of acts in conflict herewith.

**67-424. Validity of pension trusts.** Any such trust shall be valid, notwithstanding any such statutory or common law rule or provision,



which but for this act, might otherwise be applicable to and invalidate such trust.

**History:** En. Sec. 2, Ch. 214, L. 1959.

**Repealing Clause**

Section 3 of Ch. 214, Laws 1959 repealed all acts or parts of acts in conflict therewith.

CHAPTER 5—REAL PROPERTY AND ESTATES THEREIN

67-502. (6723) Enumeration of estates.

**References**

Cited in *In re Vincent's Estate*, 133 M 424, 324 P 2d 403, 412.

67-512. (6733) Suspension by trust.

**Compiler's Note**

The officials to the case of *Hodgkiss v. Northland Petroleum Consolidated*, 104

M 328, 339, 57 P 2d 811 appearing in the parent volume on page 399 should read 104 M 328, 339, 67 P 2d 811.

67-513. (6734) Repealed.

**Repeal**

This section (Sec. 1221, Civ. C. 1895), relating to the creation of a contingent

remainder in fee after a prior remainder in fee, was repealed by Sec. 3, Ch. 213, Laws 1959.

67-515 to 67-518. (6736 to 6739) Repealed.

**Repeal**

These sections (Secs. 1223 to 1226, Civ. C. 1895), relating to limitations on suc-

cessive life estates, remainders upon life estates and term of years, were repealed by Sec. 3, Ch. 213, Laws 1959.

CHAPTER 6—SERVITUDES

67-601. (6749) Servitudes attached to land.

**References**

Cited in *State v. McClure*, 127 M 534, 268 P 2d 629, 635.

67-602. (6750) Servitudes not attached to land.

**References**

Cited in *State v. McClure*, 127 M 534, 268 P 2d 629, 635.

67-607. (6755) Apportioning easements.

**References**

Cited or applied in *Yegen v. Cardwell*, 133 M 236, 321 P 2d 1077, 1079.

CHAPTER 8—OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES

67-801. (6776) Duties of tenant for life.

**Operation and Effect**

Fire insurance on buildings and insurance on an automobile taken out by the executor in favor of the estate was properly chargeable against the corpus rather

than income. *In re Lindhardt's Estate*, 133 M 65, 320 P 2d 357, 364.

Ordinary repairs on business property, such as repairs on a furnace, a new door and a lock should have been paid out of

income since the duty to pay was on the life tenant; however, repairs normally charged off over more than one accounting period, such as new roofs, a new sidewalk, and repairing the interior in connection with business property should be paid for by charging the initial expense to the estate funds, and then allocating a portion from each year's income to be deducted and paid back into the corpus. *In re Lindhardt's Estate*, 133 M 65, 320 P 2d 357, 362.

The cost of installation of a sidewalk and steps, and painting done at the re-

quest of the life tenant at a private dwelling, occupied by her, should be paid from the income of the life tenant and not out of corpus or estate funds. *In re Lindhardt's Estate*, 133 M 65, 320 P 2d 357, 362.

Improvements made by an executor pursuant to some ordinance or statute, or improvements where the property was in an untenable condition should be charged to the corpus of the estate. *In re Lindhardt's Estate*, 133 M 65, 320 P 2d 357, 364.

## 67-802. (6777) Monuments and fences.

### Construction without Agreement

In boundary dispute, fence constructed by defendant as a stock barrier, without any agreement to fix boundary line, was

not the true line as against line established by plaintiffs' surveyor. *Tillinger v. Frisbie*, 132 M 583, 318 P 2d 1079, 1081, 1083.

## 67-806. (6781) When partition fence removed.

### Removal of Line Fence

Absent agreement, a line fence may be removed by either owner only after six months notice to the other. *Thompson v. Mattuschek*, — M —, 333 P 2d 1022, 1026.

In action to restrain trespass by livestock and to recover for partial loss of a growing barley crop then being trampled and grazed down by livestock after defendant had removed a long-standing sec-

tion line fence bounding one side of a field which plaintiff had just planted to barley, complaint alleging a malicious removal of the fence was sufficient to state a cause of action for trespass of cattle upon plaintiff's property although he did not allege a secure enclosure of the barley field but did so testify. *Thompson v. Mattuschek*, — M —, 333 P 2d 1022, 1026.

## CHAPTER 10—ALIEN LAND LAW

(Unconstitutional—*State v. Oakland*, 129 M 347, 287 P 2d 39, 42)

## 67-1001 to 67-1008. Unconstitutional.

### Unconstitutional

The Alien Land Law, comprising sections 67-1001 to 67-1008 (Secs. 1 to 8, Ch. 58, L. 1923), is unconstitutional and void as being in contravention of the equal pro-

tection clause of the Fourteenth Amendment to the Constitution of the United States. *State v. Oakland*, 129 M 347, 287 P 2d 39, 42.

## CHAPTER 12—ACQUISITION OF PROPERTY BY OCCUPANCY

## 67-1203. (6818) Prescription.

### Ditch Right

Title by prescription to a ditch conveying water may be obtained by use thereof whenever water is needed. *Te Selle v. Storey*, 133 M 1, 319 P 2d 218, 220.

Where deed to defendant after describing property by legal subdivisions contained clause: "Together with all the tenements, hereditaments and appurtenances, water rights and water ditches to the same belonging," if defendant's predecessor used the ditch for more than ten years there was title in him by prescription which passed to defendant by deed and it

was of no consequence that the deed did not specifically mention the ditch right as an appurtenance. *Te Selle v. Storey*, 133 M 1, 319 P 2d 218, 220.

### Nature of Title

A title by prescription is as effective as though evidenced by a deed. *Te Selle v. Storey*, 133 M 1, 319 P 2d 218, 220.

### References

Cited in *Flathead Lumber Corp. v. Everett*, 127 M 291, 263 P 2d 376, 378; *Thibault v. Flynn*, 133 M 461, 325 P 2d 914.

## CHAPTER 15—ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION

### 67-1501. (6835) Transfer defined.

#### References

Cited in *In re Vincent's Estate*, 133 M 424, 324 P 2d 403, 412.

### 67-1515. (6849) Grants—how interpreted.

#### References

Cited in *In re Vincent's Estate*, 133 M 424, 324 P 2d 403, 412.

### 67-1523. (6857) Incidents.

#### References

Cited or applied in *Yegen v. Cardwell*, 133 M 236, 321 P 2d 1077, 1079.

## CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

### 67-1601. (6859) Requisites for transfer of certain estates.

#### Cross-Reference

Officer authorized to execute conveyances of real property by cities under commission-manager form of government, sec. 11-3286.

an intention to postpone or limit the rights of grantee until after the death of grantor. 31 ALR 2d 536.

Sufficiency of description in exception or reservation as to standing timber. 35 ALR 2d 1422.

Written matter as controlling printed matter in construction of deed. 37 ALR 2d 820.

#### Collateral References

Effect on validity of instrument in form of deed or provisions therein indicating

### 67-1607. (6865) What easements pass with property.

#### References

Cited or applied in *Yegen v. Cardwell*, 133 M 236, 321 P 2d 1077, 1079.

### 67-1608. (6866) When fee simple is presumed to pass.

#### Operation and Effect

Where there was added to a warranty deed in the usual printed form the statement that the grantees agreed not to sell or dispose of the land except to the

grantors or their heirs, it did not limit the interest conveyed to a life estate. *In re Vincent's Estate*, 133 M 424, 324 P 2d 403, 411.

### 67-1616. (6874) Implied covenants.

#### Delinquent Taxes

Where by warranty deed the "parties of the first part" grant unto the Northern Company the lands described therein, the grantors impliedly, under the statutes, covenanted that, at the time of the execution of the deed the lands were free from delinquent taxes. Such implied covenant could be sued upon as if expressly set out

in the deed. *Schuster v. Northern Co.*, 127 M 39, 257 P 2d 249, 252.

#### Operation and Effect

This section abolishes all implied covenants except the two enumerated. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 983.

### 67-1617. (6875) What the term "encumbrances" embraces.

#### References

Cited or applied in *Schuster v. Northern Co.*, 127 M 39, 257 P 2d 249, 252.

CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—  
MODES OF TRANSFER

## 67-1703. (6879) Transfer of title under sale.

## References

Cited or applied in *De Mers v. O'Leary*,  
126 M 528, 254 P 2d 1080, 1084.

## CHAPTER 18—UNIFORM GIFTS TO MINORS ACT

## Section 67-1801. Definitions.

67-1802. Manner of making gift.

67-1803. Effect of gift.

67-1804. Duties and powers of custodian.

67-1805. Custodian's expenses, compensation, bond and liabilities.

67-1806. Exemption of third persons from liability.

67-1807. Resignation, death or removal of custodian—bond—appointment of  
successor custodian.

67-1808. Accounting by custodian.

67-1809. Construction.

67-1810. Short title.

67-1811. Vested rights not to be impaired.

67-1801. **Definitions.** In this act, unless the context otherwise requires:

(a) An "adult" is a person who has attained the age of twenty-one years.

(b) A "bank" is a bank, trust company, national banking association, savings bank, industrial bank.

(c) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(d) "Court" means the district courts of general jurisdiction in the state of Montana.

(e) "The custodial property" includes:

(1) all securities and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this act;

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money and income.

(f) A "custodian" is a person so designated in a manner prescribed in this act.

(g) A "guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.

(h) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.



(i) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(j) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(k) A "minor" is a person who has not attained the age of twenty-one years.

(l) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(m) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities, or in the cancellation of surrendered securities.

(n) A "trust company" is a bank authorized to exercise trust powers in the state of Montana.

**History:** En. Sec. 1, Ch. 245, L. 1957.

#### **Title of Act**

NOTE.—Uniform State Law. Sections 67-1801 through 67-1811 constitute the "Uniform Gifts to Minors Act" approved by the National Conference of Commissioners on Uniform State Laws in 1956.

An act concerning gifts of securities and money to minors; to make uniform the law with reference thereto; providing for severability and repealing all acts and parts of acts in conflict herewith.

**67-1802. Manner of making gift.** (a) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person (an adult member of the minor's family, a guardian of the minor) or a trust company, followed, in substance, by the words: "as custodian for \_\_\_\_\_

(name of minor)

under the Montana Uniform Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor (an adult member, other than the donor, of the minor's family, a guardian of the minor) or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

“GIFT UNDER THE MONTANA UNIFORM GIFTS TO MINORS ACT

I, \_\_\_\_\_, hereby deliver to \_\_\_\_\_ as custodian  
 (name of donor) (name of custodian)  
 for \_\_\_\_\_ under the Montana Uniform Gifts to Minors Act,  
 (name of minor)  
 the following security(ies):

(insert an appropriate description of the security or securities delivered sufficient to identify it or them.)

\_\_\_\_\_ (signature of donor)  
 \_\_\_\_\_ hereby acknowledges receipt of the above described  
 (name of custodian)  
 security(ies) as custodian for the above minor under the Montana Uniform Gifts to Minors Act.

Dated: \_\_\_\_\_

\_\_\_\_\_ (Signature of custodian)”

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult person (an adult member of the minor’s family, a guardian of the minor) or a bank with trust powers, followed in substance, by the words: “as custodian for \_\_\_\_\_ under the Montana Uniform  
 (name of minor)

Gifts to Minors Act.”

(b) Any gift made in a manner prescribed in subsection (a) may be made to only one minor and only one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner prescribed in subsection (a) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor’s failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

History: En. Sec. 2, Ch. 245, L. 1957.

67-1803. Effect of gift. (a) A gift made in a manner prescribed in this act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this act.

(b) By making a gift in a manner prescribed in this act, the donor incorporates in his gift all the provisions of this act and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this act.

History: En. Sec. 3, Ch. 245, L. 1957.

67-1804. Duties and powers of custodian. (a) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this act.

(f) The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for \_\_\_\_\_ under  
(name of minor)

the Montana Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian, followed, in substance, by the words: "as custodian for \_\_\_\_\_ under the Montana Uniform  
(name of minor)

Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.



(h) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(i) A custodian has (and holds as powers in trust), with respect to the custodial property, in addition to the rights and powers provided in this act, all the rights and powers which a guardian has with respect to property not held as custodial property.

History: En. Sec. 4, Ch. 245, L. 1957.

**67-1805. Custodian's expenses, compensation, bond and liabilities.**

(a) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(b) A custodian may act without compensation for his services.

(c) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

(1) A direction by the donor when the gift is made;

(2) A statute of this state applicable to custodians;

(3) The statute of this state applicable to guardians;

(4) An order of the court.

(d) Except as otherwise provided in this act, a custodian shall not be required to give a bond for the performance of his duties.

(e) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this act.

History: En. Sec. 5, Ch. 245, L. 1957.

**67-1806. Exemption of third persons from liability.** No issuer, transfer agent, bank, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this act, or is obliged to inquire into the validity or propriety under this act of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

History: En. Sec. 6, Ch. 245, L. 1957.

**67-1807. Resignation, death or removal of custodian—bond—appointment of successor custodian.** (a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become a successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this act.



(b) A custodian, other than the donor, may resign and designate his successor by:

(1) executing an instrument of resignation designating the successor custodian; and

(2) causing each security which is custodial property and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for \_\_\_\_\_ under the (name of minor)

Montana Uniform Gifts to Minors Act"; and

(3) delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian and all other custodial property, together with any additional instruments required for the transfer thereof.

(c) A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian.

(d) If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the district court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

History: En. Sec. 7, Ch. 245, L. 1957.

**67-1808. Accounting by custodian.** (a) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(b) The court, in a proceeding under this act or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

History: En. Sec. 8, Ch. 245, L. 1957.

**67-1809. Construction.** (a) This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(b) This act shall not be construed as providing an exclusive method for making gifts to minors.

History: En. Sec. 9, Ch. 245, L. 1957.

**67-1810. Short title.** This act may be cited as the "Montana Uniform Gifts to Minors Act."

History: En. Sec. 10, Ch. 245, L. 1957.

**67-1811. Vested rights not to be impaired.** Nothing in this act shall be construed to impair constitutionally vested rights.

History: En. Sec. 12, Ch. 245, L. 1957.

**Separability Clause**

Section 11 of Ch. 245, Laws 1957 read "If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect with-

out the invalid provision or application, and to this end the provisions of this act are severable."

**Repealing Clause**

Section 13 of Ch. 245, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 19—PRINCIPAL AND INCOME ACT

Section 67-1901. Definitions.

- 67-1902. Act to govern ascertainment of principal and income and apportionment of receipts and expenses.
- 67-1903. Receipts constituting income or principal—use.
- 67-1904. Death of tenant between payment dates—apportionment.
- 67-1905. Corporate dividends—stock dividends—subscription rights—liquidation of corporation—merger.
- 67-1906. Bonds or obligations as principal—valuation—loss or gain on sale.
- 67-1907. Operation of business—net profits—ascertaining income—increase or loss of principal.
- 67-1908. Animals constituting principal—offspring.
- 67-1909. Natural resources—proceeds from severance.
- 67-1910. Property subject to depletion as principal.
- 67-1911. Unprofitable principal—change in form of investment—delayed income.
- 67-1912. Expenses—apportionment.
- 67-1913. Expenses where no trust created—improvements.
- 67-1914. Interpretation of act—uniformity.
- 67-1915. Short title.
- 67-1916. Effective date—application to estates created after date.

**67-1901. Definitions.** "Principal" as used in this act means any realty or personalty which has been so set aside or limited by the owner thereof or person thereto legally empowered that it and any substitutions for it are eventually to be conveyed, delivered or paid to a person, while the return therefrom or use thereof or any part of such return or use is in the meantime to be taken or received by or held for accumulation for the same or another person;

"Income" as used in this act means the return derived from principal;

"Tenant" as used in this act means the person to whom income is presently or currently payable, or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution;

"Remainderman" as used in this act means the person ultimately entitled to the principal, whether named or designated by the terms of the

transaction by which the principal was established or determined by operation of law;

"Trustee" as used in this act includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee.

**History:** En. Sec. 1, Ch. 277, L. 1959.

**Title of Act**

An act concerning the ascertainment of principal and income and the apportion-

ment of receipts and expenses among tenants and remaindermen, and to make uniform the law with reference thereto; containing a repealing clause and providing an effective date.

**67-1902. Act to govern ascertainment of principal and income and apportionment of receipts and expenses.** This act shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen, in all cases where a principal has been established with or, unless otherwise states hereinafter, without the interposition of a trust; except that in the establishment of the principal, provision may be made touching all matters covered by this act, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this act.

**History:** En. Sec. 2, Ch. 277, L. 1959.

**67-1903. Receipts constituting income or principal—use.** (1) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this act.

(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal unless otherwise expressly provided in this act. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal.

(3) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant or retained by him if already in his possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law.

**History:** En. Sec. 3, Ch. 277, L. 1959.



**67-1904. Death of tenant between payment dates—apportionment.** Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue; the balance shall be a part of the principal.

**History:** En. Sec. 4, Ch. 277, L. 1959.

**67-1905. Corporate dividends—stock dividends—subscription rights—liquidation of corporation—merger.** (1) All dividends on shares of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal. Subject to the provisions of this section, all dividends payable otherwise than in the shares of the corporation itself, including ordinary and extraordinary dividends and dividends payable in shares or other securities or obligations of corporations other than the declaring corporation, shall be deemed income. Where the trustee shall have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

(3) Where the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of



the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(4) Where a corporation succeeds another by merger, consolidation or reorganization or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to, or in substitution for, their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) In applying this section the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or in default thereof the date of declaration of the dividend.

**History:** En. Sec. 5, Ch. 277, L. 1959.

**67-1906. Bonds or obligations as principal—valuation—loss or gain on sale.** Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale any loss or gain realized thereon shall fall upon or enure to the principal.

**History:** En. Sec. 6, Ch. 277, L. 1959.

**67-1907. Operation of business—net profits—ascertaining income—increase or loss of principal.** (1) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

(2) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross returns during and the inventory value of the property at the end of such period, the expenses during and the inventory value of the property at the beginning of such period.

(3) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

(4) Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, after the income from such business for that year has been exhausted, shall fall upon principal.

**History:** En. Sec. 7, Ch. 277, L. 1959.

**67-1908. Animals constituting principal—offspring.** Where any part of the principal consists of animals employed in business, the provisions of section 7 [67-1907] shall apply; and in other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income.

**History:** En. Sec. 8, Ch. 277, L. 1959.

**67-1909. Natural resources—proceeds from severance.** Where any part of the principal consists of property in lands from which may be taken timber, minerals, oils, gas or other natural resources and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell, lease or otherwise develop such natural resources, and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, such proceeds, if received as rent on a lease, shall be deemed income, but if received as consideration, whether as royalties or otherwise, for the permanent severance of such natural resources from the lands, shall be deemed principal to be invested to produce income. Nothing in this section shall be construed to abrogate or extend any right which may otherwise have accrued by law to a tenant to develop or work such natural resources for his own benefit.

**History:** En. Sec. 9, Ch. 277, L. 1959.

**67-1910. Property subject to depletion as principal.** Where any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties or return from the property shall be income to the tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five per centum (5%) per annum of its fair inventory value or in default thereof its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal.

**History:** En. Sec. 10, Ch. 277, L. 1959.

**67-1911. Unprofitable principal—change in form of investment—delayed income.** (1) Where any part of a principal in the possession of a trustee consists of realty or personalty which for more than a year and until disposed of as hereinafter stated has not produced an average net income of at least one per centum (1) per annum of its fair inventory value or in default thereof its market value at the time the principal was established or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done

without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of his death his personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated.

(2) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of five per centum (5%) per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property or in default thereof its market value at the time the principal was established or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(3) The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be one (1) year after the trustee first received the property if then unproductive, otherwise one (1) year after it became unproductive.

(4) If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

(5) In the case of successive tenants the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income.

**History:** En. Sec. 11, Ch. 277, L. 1959.

**67-1912. Expenses—apportionment.** (1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation except commissions computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in section 11 [67-1911], shall be paid out of principal, subject to the provisions of subsection (2) of section 11 [69-1911].

(2) All other expenses, including trustees' commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign,



upon profit or gain defined as principal under the terms of subsection (2) of section 3 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection (1) which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection (2), the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

**History:** En. Sec. 12, Ch. 277, L. 1959.

**67-1913. Expenses where no trust created—improvements.** (1) The provisions of section 12 [67-1912], so far as applicable and excepting those dealing with costs of, or special taxes or assessments for, improvements to property, shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

(2) Subject to the exceptions stated in subsection (1) the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, where such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the American Experience Tables of Mortality and no other evidence of duration or expectancy shall be considered.

**History:** En. Sec. 13, Ch. 277, L. 1959.

**67-1914. Interpretation of act—uniformity.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** En. Sec. 14, Ch. 277, L. 1959.



67-1915. **Short title.** This act may be cited as the Uniform Principal and Income Act.

**History:** En. Sec. 15, Ch. 277, L. 1959.

67-1916. **Effective date—application to estates created after date.** This act shall take effect upon its passage and approval and shall apply to all estates of tenants or remaindermen which become legally effective after that date.

**History:** En. Sec. 17, Ch. 277, L. 1959.

**Compiler's Note**

The approval date of Ch. 277, Laws 1959 was March 17, 1959.

**Repealing Clause**

Section 16 of Ch. 277, Laws 1959 read "All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed."

## TITLE 68—PUBLIC EMPLOYEES RETIREMENT ACT

- Chapter 1. Purpose of act—definitions, 68-102.  
2. Retirement system created—who are members, 68-202, 68-203.  
5. Board of administration—powers and duties, 68-501.  
7. Management of retirement fund, 68-701.  
8. Retirement—compulsory—voluntary, 68-801, 68-802.  
9. Service and disability retirement allowances, 68-901.  
10. Reinstatement—reduction of allowance—optional modification of allowances, 68-1001 to 68-1003.  
11. Death benefits, 68-1101.  
13. Miscellaneous provisions, 68-1303, 68-1306, 68-1308.

### CHAPTER 1—PURPOSE OF ACT—DEFINITIONS

#### Section 68-102. Definitions.

##### 68-101. Purpose of act—public employees retirement system.

###### References

Cited or applied in State ex rel. Ebel v.  
Schye, 130 M 537, 305 P 2d 350, 353.

**68-102. Definitions.** The following words and phrases used in this act, unless a different meaning is plainly indicated in the context, shall have the following meanings:

(a) "Retirement system" shall mean the "public employees' retirement system" created by this act.

(b) "Contracting city" shall mean any municipal corporation in the state which has elected to have all, or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose.

(c) "Contracting county" shall mean any county in the state which has elected to have all or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose. For the purpose of applying the provisions of this act to counties, wherever in this act reference is made to "city," "contracting city," "city employee," "city clerk," "municipal corporation," or "legislative body" of any city or municipal corporation, such words shall be construed to read, respectively, as "county," "contracting county," "county employee," "county clerk," "county" or "board of county commissioners" of any county.

(d) "Public agency" shall mean any public district, local housing authority, or local authority, or public body whatsoever.

(e) "Contracting public agency" shall mean any public agency in the state which has elected to have all or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose. For the purpose of applying the provisions of this act to public agencies, whenever in this act reference is made to "city," "contracting city," "city employee," "city clerk," "municipal corporation," or "legislative body" of any city or municipal corporation, such words shall be construed to read, respectively, as "public agency," "contracting public agency," "public agency employee," "secretary of governing board or

analogous authorized employee of the public agency," "public agency," or "governing board or head of a public agency not managed by a board."

(f) "State employee" means any person employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor and from the fees or income of any department or agency of the state, excepting all elective officers and persons directly appointed by the governor, who do not elect membership under the provisions of section 68-203 of this act, court commissioners, and members of any state board or commission who serve the state intermittently and are paid on a per diem basis (except as herein otherwise provided). "State employee" means further any employee under direct state supervision or functional state supervision as certified by the head of the state department concerned and approved by the board of administration of the public employees' retirement system, who is paid either fully or in part from federal funds, but is not subject to federal retirement system.

(g) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the state board of examiners, state auditor and state treasurer for payment.

(h) "Member" shall mean any person included in the membership of the retirement system set forth in section 68-202 and not excluded in section 68-203.

(i) "Board" shall mean the "board of administration" created in this act.

(j) "Retirement fund" shall mean the "public employees' retirement fund" created and established in section 68-405.

(k) "State service" shall mean service rendered as an employee, hired or appointed, of the state or its university or any of the colleges, schools, components or units thereof for the purpose of this act, service rendered as an employee of any contracting city for compensation, and, for the purposes of this act, a member shall be considered as being in "state service" only while he is receiving compensation from the state, or its university as aforesaid or the contracting city for such service, except as provided in subdivision (f) of section 68-501.

(l) "Prison employee" for the purpose of the retirement system, means persons appointed by the warden of the state prison or by the state board of prison commissioners.

(m) "Prior service" shall mean all state service rendered before the first day of July, 1945; and all state service rendered as an employee of a contracting city before the effective date of the city's participation in the retirement system, and allowable as provided in subdivision (h), section 68-501. Employees of a contracting city shall receive credit for prior service only if the election of the contracting city to participate in the public employees' retirement act is filed with the board on or before, but not after July 1, 1950. Notwithstanding the sentence preceding, "prior service" as applied to a person, employed by the state, including the university, who became a member while employed on a part-time basis, because of amendments to this retirement act, or as applied to a person

who became a member prior to said amendments, because of a change in the employment status to a full time basis, shall mean all state service rendered before the effective date of said membership.

(n) "Continuous service" as applied to "prior service" shall mean all prior service, regardless of interruptions in such service, and as applied to service as a member shall mean uninterrupted employment in state service except as provided by subdivision (h) section 68-501, and, except that when for any cause whatever, a member discontinues state service but subsequently re-enters such service within three (3) years from the date of the discontinuance, such interruption shall not be deemed to break the continuity of service.

(o) "Beneficiary" shall mean any person in receipt of a pension, annuity, retirement allowance, death benefit or any other benefit provided by this act.

(p) "Compensation" shall mean the remuneration paid in cash out of funds controlled by the state, the university or the contracting city, plus the monetary value as determined by the board of administration, of living quarters, board, lodging, fuel, laundry and other advantages of any nature furnished by the state, the university, or the contracting city to a member, in payment for services.

(q) "Compensation earnable" by a member shall mean the average monthly compensation as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, it being assumed that during any absence said member was in the position held by him at the beginning of the absence: and provided that compensation received by a member subsequent to July 1, 1952, in excess of five thousand dollars (\$5,000.00) per annum may be used as a basis of compensation for the purpose of this retirement system if (a) he contributes normal contributions on the excess of such salary subsequent to July 1, 1952, over five thousand dollars (\$5,000.00) to his individual account in the annuity savings fund and (b) he contributes three per cent (3%) of the excess of his salary subsequent to July 1, 1952, over five thousand dollars (\$5,000.00) to the pension accumulation fund of the retirement system.

(r) "Final compensation" shall mean the average annual compensation earnable by a member during any three (3) consecutive years upon which normal contributions have been made, said years to be chosen by the member.

(s) "Regular interest" shall mean the average interest earned on investments made hereunder, compounded at each June thirtieth, subject to subdivision (j) section 68-501 plus such additional interest as the board may credit from year to year in accordance with the provisions of this act.

(t) "Normal contributions" shall mean contributions by members under the provisions of section 68-701 (g) to (n), both inclusive.

(u) "Additional contributions" shall mean contributions by members under the provisions of section 68-701(k).

(v) "Accumulated normal contributions" shall mean the sum of all the normal contributions standing to the credit of a member's individual account, together with the regular interest thereon.



(w) "Accumulated additional contributions" shall mean the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(x) "Accumulated contributions" shall mean accumulated normal contributions plus any accumulated additional contributions standing to the credit of a member's account.

(y) "Pension" shall mean payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting cities from the funds of such cities, as provided in this act.

(z) "Annuity" shall mean payments for life derived from contributions made by a member as provided in this act.

(aa) "Retirement allowance" shall mean the pension plus the annuity.

(ab) "Death allowance" shall mean payments for life, or until remarriage, or until the youngest child shall attain the age of eighteen (18) years, as provided in section 68-1101.

(ac) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board, and interest at a rate to be annually determined by the retirement board compounded annually, subject to subdivision (j), section 68-501.

(ad) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this act.

(ae) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, shall mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(af) "Actuary" shall mean the actuary regularly and continuously employed on a full or part time basis, by the board of administration.

(ag) "Benefit" shall be the retirement allowance, death allowance, death benefit or refund of accumulated contributions provided by this act.

(ah) "Fiscal year" shall mean any year commencing with July first and ending June thirtieth next following.

**History:** En. Sec. 2, Ch. 212, L. 1945; amd. Sec. 1, Ch. 297, L. 1947; amd. Sec. 1, Ch. 186, L. 1951; amd. Sec. 1, Ch. 92, L. 1955; amd. Sec. 1, Ch. 246, L. 1959.

#### Amendments

The 1955 amendment in subd. (d) substituted the words "supported in whole by public taxes" for the words "or public body whatsoever"; in subd. (f) deleted the words "in a state office or regularly" which appeared between the words "person" and "employed," before amendment the statement in parentheses "(except as herein otherwise provided)" appeared between the words "appointive" and "officers," deleted the words "but including the president and all deans, professors and instructors in every department, college, and school of the university of Montana" which appeared after the word "basis," inserted the words "of admin-

istration" after the word "board" and deleted two former paragraphs which read "Temporary employees shall not be eligible to membership. All permanent and probationary employees shall become members on the first day of employment, and proper deductions shall be made from the salaries of such employees beginning on the first day of employment. Upon completion of six (6) consecutive months of service temporary employees shall be deemed permanent employees for the purpose of this act, and proper deductions shall be made from the salaries of such employees on the first day following the completion of such six (6) months' consecutive service. Permanent seasonal employees shall in no event be considered temporary employees." In subd. (m) substituted the words "Prior service" shall mean all state service rendered before the first day of July, 1945"; for the words

"Prior service" shall mean all state service, or service to a contracting city, rendered before the first day of January, 1945; and all service rendered as an employee of the university before the same date"; in subd. (q) substituted the proviso clause for the words "and that prior to entering state service he was in the position first held by him in such service, but such 'compensation earnable' shall not exceed four hundred sixteen dollars and sixty-six cents (\$416.66) per month" and deleted subd. (ai).

The 1959 amendment in subd. (d) inserted the words "local housing authority"; deleted the word "other" which appeared before the words "local authority";

substituted "or public body whatsoever" for "supported in whole by public taxes" and in subd. (f) substituted "officers and persons directly appointed by the governor, who do not elect membership under the provisions of section 68-203 of this act" for "and all appointive officers."

#### Subdivision (f)

The legislature by using the words "excepting as herein otherwise provided" has provided a means for all elective officers, and all persons directly appointed by the governor to become members of the system through section 68-203. *Corwin v. Bieswanger*, 126 M 337, 251 P 2d 252, 253.

## CHAPTER 2—RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

Section 68-202. Members—re-entry into state service—school district employees.

68-203. Who are ineligible to membership in system.

**68-202. Members—re-entry into state service—school district employees.** (a) From and after July 1, 1955. All employees shall become members on the first day of employment.

(b) Every employee who re-enters state service shall become a member unless he has had an original election of exemption from membership and his state service was not interrupted by a break of more than one (1) month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than one (1) month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon re-entry.

(c) Time during which an employee of a school district is absent from state service during official vacation shall be counted as service in determining eligibility for membership under this act.

**History:** En. Sec. 4, Ch. 212, L. 1945; amd. Sec. 2, Ch. 186, L. 1951; amd. Sec. 2, Ch. 92, L. 1955.

#### Amendment

The 1955 amendment substituted the present subd. (a) for a former introductory clause and subd. (a) which read "Except as herein expressly excluded from membership all employees shall become members of the retirement system as follows: (a) All permanent and probationary employees shall become mem-

bers on the first day of employment. Temporary employees shall be deemed permanent employees upon the completion of six (6) consecutive months of service, and such employees shall become members on the first day following the completion of such six (6) consecutive months of service."

#### References

Cited in *Corwin v. Bieswanger*, 126 M 337, 251 P 2d 252, 253.

**68-203. Who are ineligible to membership in system.** The following employees shall not become members of the retirement system:

(a) Elective officers, other than elective officers who filed with the board of administration an election in writing to become members; provided, that any person so excluded from membership, who later becomes

a member hereof, shall have the option of making contributions to the retirement system in the amount which he would have contributed had he not been so excluded, and he shall then receive credit for prior service in the same manner as if he had not been so excluded. If he shall affirmatively exercise the option, the contributions of the state, or the contracting city because of his membership, shall be the same as they would have been had he not been so excluded.

(b) Inmates of state institutions who are allowed compensation for such service as they are able to perform.

(c) Persons in state institutions principally for the purpose of training, but who receive compensation.

(d) Independent contractors who are not employees.

(e) Employees serving in employment which does not exceed the equivalent of sixty (60) working days in any fiscal year.

(f) Persons in state service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members, provided any person so excluded from membership by his own election may on or before, but not after, July 1, 1948, file with the board of administration an election to become a member and receive credit for prior service, and shall become a member of the retirement system on the date of filing such election. Such person shall receive credit for prior service only if his election to become a member is filed with the board on or before, but not after July 1, 1948, and shall have the option of paying to the retirement system all or part of the amount which he would have contributed had he not been so excluded but had been a member to and including the date of filing such election to become a member, plus interest which would have accumulated thereon through such date. Upon the retirement of such person under section 68-801, the pensions provided by contributions of the state under this act shall be the same as if such person affirmatively exercised the option to pay to the retirement system all of that amount with accumulated interest.

(g) Persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members.

(h) Persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances. Any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of section 68-701 (m) as permanently separated from state service. The accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-1101. Contributions to the retirement fund under section 68-1307 on the basis of compensation earned by members after



the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the fund from which said contributions were made. For the purpose of this section, persons who merely are receiving pensions or retirement allowances, or other payments, from any source whatever, on account of service rendered to some other agency than the state and when such persons were not in state service, shall not be considered, because of such receipt, members of any other retirement or pension system.

(i) Appointive members of boards and commissions who serve the state or contracting agency on an intermittent basis, and who are paid on a per diem basis.

(j) Persons who become public employees under the meaning of this act after they have reached their sixtieth (60) birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members.

**History:** En. Sec. 5, Ch. 212, L. 1945; amd. Sec. 2, Ch. 297, L. 1947; amd. Sec. 3, Ch. 92, L. 1955; amd. Sec. 2, Ch. 246, L. 1959.

#### Amendments

The 1955 amendment added subds. (i) and (j).

The 1959 amendment substituted present subd. (e) for one that read "(e) Employees serving on a part-time basis unless such employees are members at January 1, 1946, or any time of employment after that date on a part time basis, or unless such employment is regular and continuous and in the opinion of the employing power will extend for more than one (1) year, and requires service for at least one-half ( $\frac{1}{2}$ ) the time required of employees in the same group or class, serving on a full time basis. Any employee

who is a member at January 1, 1946, and who is serving on a part time basis not requiring at least one-half ( $\frac{1}{2}$ ) the time required of employees in the same group or class serving on a full time basis, may elect to terminate his membership in the system. Any employee so selecting shall be considered as permanently separated from state service, solely for the purposes of section 68-701 (m)."

#### Membership

As to elected officers and persons directly appointed by the governor the Public Employees' Retirement Act provides that they may elect to become members by complying with the provisions of subdivisions (a), (f) and (g) hereof. *Corwin v. Bieswanger*, 126 M 337, 251 P 2d 252, 253.

## CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

### Section 68-501. Board of administration.

**68-501. Board of administration.** The board of administration shall consist of five (5) members appointed by the governor, three (3) of which members shall be public employees and shall be members of the retirement system, and two (2) of which shall be members at large. Terms of office shall be for five (5) years provided, however, that those first appointed after this act takes effect shall be for terms, respectively, of one (1), two (2), three (3), four (4), and five (5) years but their successors shall hold office for terms of five (5) years; provided not more than one (1) employee member of the retirement board shall be an employee of the same department, bureau or agency of the state or contracting public agency. Members of the board shall be paid their actual and necessary expenses and those members of the board who are not members of the public employees' retirement system shall be entitled to receive in addition to actual and necessary expenses compensation at the rate of ten dollars (\$10.00) per day.



The attorney general is hereby designated legal counsel for the board.

(a) Vacancy on board—how filled. Any vacancy occurring ninety (90) days or more before the expiration of the term of any member of the retirement board shall be filled by appointment by the governor. The person thus appointed shall serve for the remainder of the unexpired term.

(b) The board may establish such rules and regulations as it deems proper, within the limitations of this act and for its proper administration, operation and enforcement. The board shall elect one (1) of its members president, and shall appoint and fix the compensation of a secretary who shall have the power to administer oaths, and other necessary employees. It shall maintain its office in the city of Helena. A quorum of the board shall be three (3) members. The board may appoint a committee of one or more of its members, which shall have authority to perform routine acts, such as retirement of members and fixing of retirement allowances, approval of death claims and correction of records necessary in the administration of the system in accordance with the provisions of this act and rules and regulations of the board. All expenses of the administration of this act in excess of amount provided by the one dollar (\$1.00) membership fee shall be a charge on the appropriation made from the general fund of the state.

(c) The board shall determine who are employees within the meaning of this act and shall be the sole authority and judge under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system, and shall have exclusive control of the administration and investment of the fund. As soon as practical after the close of each fiscal year, the board shall file with the governor a report of its work for such fiscal year.

(d) Subject to the following and to all other provisions of this act, and such rules and regulations as it may adopt in pursuance thereof, the board shall determine and may modify allowances for service and disability.

(e) The board of administration shall fix and determine how much service rendered in any fiscal year shall be the equivalent of a year of service and parts thereof, but shall credit one (1) year for two hundred and fifty (250) or more days of service rendered by employees on a per diem basis and one (1) year for ten (10) months or more of service rendered by employees on a monthly basis, but not more than one (1) year for all service in any fiscal year. In determining the credit to be granted for service rendered on a part time basis, for purposes of calculating retirement allowances, the service shall be reduced to a full time basis according to the service required, in the next preceding sentence, for credit for one (1) year of service. In calculating benefits based on service so determined, except in calculating the additional pension provided in subdivision (g) of section 68-901 compensation earnable shall be taken as the compensation which would be earnable if the employment had been on a full time basis, and with a compensation derived by multiplying the member's compensation by ratio of full time to the time he was required by his employment to engage in his duties. In calculating the credit to be granted for service rendered on a part time basis, for purposes of de-

termining qualifications for retirement, and of calculating benefits payable upon death before retirement, the service required in this paragraph for credit for a year of service shall not be used, but instead, a year of service shall be credited for each year during which the member was employed throughout the year on a part time basis and was engaged in his duties the full amount of time he was required by his employment to be so engaged. Credit for fractional years will be granted to the extent of the fraction derived by dividing the time during which the member was engaged in his duties within the year, by the time he was required by his employment to be so engaged.

(f) Time during which a member is absent from public service without compensation shall not be allowed in computing service; except that time during which a member is absent from public service by reason of having been ordered on duty with the armed forces of the United States, or by reason of voluntary service by the member in said forces or on ships operated by or for the United States government, either during a war involving the United States as a belligerent or in any other national emergency, and for ninety (90) days thereafter shall be considered as time spent in public service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits unless the member elects to contribute and contributes under the retirement system. Any member so absent and until his return within the said ninety (90) days may resign from the system. Any members so absent shall have the right to contribute to said system, either during his service with the armed forces of the United States or in the merchant marine of the United States, and ninety (90) days thereafter or upon his return to the state service, at times and in a manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence. If he does so contribute he shall receive credit for public service for such time in the same manner as if he had not been absent from public service. Whenever a member elects to continue his contributions, the state or the contracting city, or county or other agency shall thereupon contribute an amount equal to that which it would have contributed under section 68-1307 or under the contract between the board and the legislative body, as the case may be, if the member had not been absent from state service.

Any member so absent or any member absent from state service by reason of having been ordered by an authorized official of the state of Montana or the United States, to duties outside state service shall be paid upon his request, his accumulated contributions. Such payment shall terminate any election by said member under this section to contribute.

Time during which a member is absent from public service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment, shall be considered as spent in public service, for the purpose of qualification for retirement and death benefits, but not for the calculation of retirement benefits, except as he received compensation, as defined in this act and as distinguished from disability indemnity under the workmen's compensation

act during the absence, and then only to the extent of compensation received.

(g) Each employee shall file with the board of administration such information affecting his status as a member of the retirement system as the board may require.

(h) Credit for prior service shall be granted to each person other than persons who are employees of the university or of a contracting city at the time of becoming members of the retirement system, who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service. Credit for prior service shall be granted to each person who is employed by the university at the time of becoming a member of the retirement system regardless of whether he had been retired under the system prior to the effective date hereof, who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service.

Credit for prior service shall be granted to each person who is employed by a contracting city at the time of becoming a member of the system, who has rendered such service as defined in this act, and who has become a member of the retirement system within three (3) years after last rendering prior service. Notwithstanding the three (3) sentences next preceding, credit for prior service shall be granted to each person employed by the state including the university, who became a member while employed on a part time basis, because of amendments to this retirement act, or who became a member prior to said amendments, because of a change in status to a full time basis. The credit for prior service to be granted persons employed by a contracting city who are included under the retirement system shall be established by contract between the board and the legislative body of such city; and such credit as may be granted to a person shall be in the form of a percentage, not to exceed the analogous percentage applicable to employees of the state, for each year of prior service. Prior service so credited shall be the basis for a retirement allowance or benefit as provided in this act only if the membership in the retirement system continues unbroken until retirement or retirement allowance or until the granting of such other benefit; provided, that termination of membership by withdrawal of accumulated contributions followed by the redeposit of such contributions upon re-entrance into public service as herein provided shall not constitute a break in membership, but this section shall not be construed to entitle any person to credit as prior service for time during which he was not in public service as defined in this act.

Credit for any prior service, not previously granted, shall be granted to a member upon request for retirement provided that the member has a total of not less than ten (10) years of creditable state service of which not less than three (3) years have been as a contributing member of the retirement system and the retirement allowance does not include credit for all state service prior to July 1, 1945, or in the case of a contracting



city prior to the date of the contract, or July 1, 1947, whichever is earlier. Proper certification of such service must be furnished.

(i) The management and control of the retirement system shall be vested in the board of administration, and it shall exercise the following powers and perform the following duties:

(j) The board of administration shall keep in convenient form such data as shall be necessary for the actuarial valuation of the retirement fund created by this act. On July 1, 1946, and at the end of every two-year period thereafter, it shall cause to be made an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries under the provision of this act, and shall further cause to be made an actuarial valuation of the assets and liabilities of the public employees' retirement fund herein created, and from time to time shall determine the rate of interest being earned on the said retirement fund. Upon the basis of any or all of such investigation, valuation, and determination, said board shall adopt such mortality, service and other tables and such interest rate, in lieu of the interest rate specified herein, or any of such items as it shall deem necessary, and shall make such revision in rates of contributions of members as it may deem necessary to comply with the provisions of section 68-701. No adjustment shall be included in the new rates for time prior to the effective date of such revision.

(k) The board shall credit contributions of members of the state and contracting cities with interest at the rate being used under the system on the effective date hereof, compounded each June 30, subject to the foregoing subdivision (j) of section 68-501. At the end of each fiscal year, beginning with the second fiscal year of the operation of the retirement system, it may credit to all contributions held in the retirement fund on June 30 of the then current fiscal year, such interest in excess of said rate provided herein as it may deem proper in the light of the earnings of the retirement fund during such fiscal year, but such additional interest credited during any fiscal year shall not be greater than the excess of said earnings over the interest otherwise credited to contributions during that year. Interest at said rate, compounded annually, subject to said foregoing subdivision (j) hereof, shall be used in the calculation of benefits under any mortality table adopted by the board, regardless of any additional interest allowed on contribution under this paragraph.

In addition to other records and accounts, it shall keep such records and accounts as may be necessary to show at any time:

The total accumulated contributions of members.

The total accumulated contributions of retired members less the annuity payments made to such members.

The accumulated contributions of the state and of contracting cities held for the benefit of members on account of service rendered as members of the retirement system.

All other accumulated contributions of the state and of contracting cities which shall include the amounts available to meet the obligation of the state and of the contracting cities, respectively on account of benefits that have been granted to retired employees and on account of prior service of members.



(l) In addition to rendering the annual report to the governor required by subsection (c) of this section, it shall cause to be published annually a financial statement showing an actuarial valuation of the assets and liabilities of the retirement system created by this act and a statement as to the accumulated cash and securities in the retirement fund as certified by the state auditor, but until all prior service is verified, the board of administration may omit from the financial statement published annually, assets and liabilities resulting from such prior service, and may include assets and liabilities on account of service rendered as members in amounts equal only to accumulated contributions held on account of such service.

**History:** En. Sec. 14, Ch. 212, L. 1945; amd. Sec. 5, Ch. 297, L. 1947; amd. Sec. 4, Ch. 186, L. 1951; amd. Sec. 1, Ch. 224, L. 1951; amd. Sec. 1, Ch. 225, L. 1953; amd. Sec. 4, Ch. 92, L. 1955.

#### Amendment

The 1955 amendment in subd. (h) substituted the third paragraph for two former paragraphs which read "Credit for prior service shall be granted to all persons who have been at any time since July 1, 1945, or who may at any time hereafter become members or employees of the state or of a contracting city, contracting county, public agency or contracting public agency, notwithstanding any other provisions of the Public Employees' Retirement Act, as amended or supplemented; subject however, to the following conditions: namely, that any such person desiring to qualify for the benefits of the act must contribute to the pension accumulation fund of the public employees' retirement system for the purpose of accomplishing such qualification, an amount which shall be based on age and sex at the time of original membership, and upon the compensation earnable by such person during the month preceding the separation of such person from the state service. The time of orig-

inal membership is hereby defined as the date when any such person elects to become a member of the public employees' retirement system. Provided that credit for prior service shall be granted to all retired members for all state service rendered prior to January 1, 1945, notwithstanding the date of participation of the contracting public agency in the public employees' retirement system or any other limitation or provision of the Public Employees' Retirement Act." In subd. (k) substituted the words "on June 30" for "at June 30th."

#### Subd. (h) Retroactive

Under the amendment by chapter 224 of Laws 1951, subsection (h) is retroactive and a person who retired in 1949 is entitled to a credit for his service prior to January 1, 1945 and his increase in the retirement pension would be from the date of his retirement not just the date that chapter 224 of Laws 1951 went into effect. *Davidson v. Love*, 127 M 366, 264 P 2d 705. (See, however, dissenting opinion, 127 M 366, 264 P 2d 705, 708.)

#### References

Cited or applied in *State ex rel. Ebel v. Schye*, 130 M 537, 305 P 2d 350, 353.

## CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

Section 68-701. Management of retirement fund.

**68-701. Management of retirement fund.** The retirement fund shall be managed as follows:

(a) The board of administration shall have exclusive control of the administration of said fund except as otherwise provided.

(b) The said fund shall be invested by the state board of land commissioners as part of the long term investment fund.

(c) The board of administration shall deposit monthly in the state treasury all amounts received by it as provided in this section and section 68-1307.

(d) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the ad-

ministration thereof and the state board of land commissioners as to the investment thereof. All payments from said fund shall be made by him only upon vouchers signed by two (2) board members designated by the board of administration. A duly attested copy of a resolution of the board of administration designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the board of administration.

(e) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the said fund shall be paid into said fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during said year shall be retained in said fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(f) Except as herein provided, no member and no employee of the board of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains of profits accruing therefrom. And no member or employee of the said board directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits, nor shall any such member or employee in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any member or employee of said board become an indorser or surety as to, or in any manner an obligor for investments by the board.

(g) The normal rates of contribution of members shall be based on sex and the age at the nearest birthday at the time of entrance into the retirement system. The normal rates of contribution shall be such as will provide an average annuity at age sixty-five (65) equal to one one hundred-fortieth ( $1/140$ ) of the final compensation of members, according to the tables adopted by the board, for each year of service rendered after entering the system. Nothing in this section shall prevent the adoption of one (1) schedule of rates for males and one (1) schedule for females.

(h) The actual amount of annuity receivable by any member upon retirement shall be the actuarial equivalent of his accumulated contributions, as provided in subdivisions (a) and (k) of section 68-1307.

(i) From and after July 1, 1955, the board of administration shall certify to the head of each office or department of the state and to the registrar of the university the normal rate of contribution as provided in this act for each member in such office, department, or the university, respectively. The head of each office or department of the state shall apply such rate of contribution to the compensation of each member, and shall certify to the state auditor on each and every payroll the amount to be contributed and shall furnish immediately to the board of administration a copy of each and every such payroll; and each such amount shall be deducted by the head of each office or department and shall be remitted to the board. The registrar of the university shall apply the rate of contribution certified to him by the board to the compensation of each member employed by the

university and the contributions so determined shall be deducted by the registrar of the university from the compensation of each such member; each such amount shall be remitted to the board and the registrar of the university shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by such payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

(j) From and after July 1, 1955, the board of administration shall certify to the city clerk, or other officer designated by the legislative body, of each contracting city the rate of contribution as provided in this act for each member included under the retirement system respectively. The city clerk, or other officer, shall apply the rate of contribution certified to him by the board to the compensation of each member included in the retirement system and the contribution so determined shall be deducted by the city clerk, or other officer, from the compensation of each such member; each such amount shall be remitted to the board and the city clerk or other officer, shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims to the benefits to which they may be entitled under the provisions of this act.

(k) Subject to the rules and regulations to be established and promulgated by the board of administration, any member may elect to contribute at rates in excess of those provided for in subsection (i) and (j) of this section of this act, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting city any additional financial obligation. The provisions of subdivision (f) and (g) of section 68-203 shall apply also to additional contributions. The board, upon application shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contributions.

(l) In addition to the contributions hereinbefore provided to be paid by employees who are members of the retirement system created by this act, every such employee shall pay an annual membership fee of one dollar (\$1.00) which amount, together with other moneys appropriated for that purpose, shall be used for the support of the board of administration.

(m) From and after July 1, 1955, should the state service of a member be discontinued otherwise than by death or retirement, he shall after the date of discontinuance, be paid such part of his contributions as he demands. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered state service, all or part of his



contributions if after a previous discontinuance of state service he withdrew all or part of his contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in subsection (n).

Any member with ten (10) or more years of service, whose service is discontinued otherwise than by death or retirement, shall have the right to elect within ninety (90) days after such termination of service, and without right or revocation, whether to allow his accumulated contributions to remain in the retirement fund. Upon the qualification for retirement by reason of age or disability of a member who has elected to allow his accumulated contributions to remain in the retirement fund, he shall receive a retirement allowance in accordance with the provisions of section 68-901, exclusive of subparagraph (g) of section 68-901.

(n) Any member may redeposit in the retirement fund, in one sum or in not to exceed twelve (12) monthly or twenty-four (24) semimonthly payments, an amount equal to that which he withdrew therefrom at the last termination of his membership, subject to minimum monthly or semimonthly payments as fixed by the board of administration. If a member, upon re-entering the retirement system after a termination of his membership, does not elect to make or, having so elected, subsequently does not make such redeposit, he shall re-enter as a new member without credit for any service except the prior service credited to him before said termination, and the rate of his contribution for future years shall be the normal rate provided for in this act at his age of re-entrance; otherwise his rate of contribution for future years shall be the same as his rate prior to the last termination of his membership, and his membership shall be the same as if unbroken by such last termination. Regardless of whether such redeposit is made, the documents held by the retirement system as executed by said member prior to termination of membership shall be held by the system for the same purposes as prior to said termination, and beneficiaries nominated in such documents shall continue unchanged until changed as provided herein.

(o) The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

**History:** En. Sec. 18, Ch. 212, L. 1945; amd. Sec. 6, Ch. 297, L. 1947; amd. Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955; amd. Sec. 3, Ch. 246, L. 1959.

#### Amendments

The 1955 amendment inserted at the beginning of subds. (i) (j) and (m) the phrase "From and after July 1, 1955," deleted the words "so much of" and "as does not exceed four hundred sixteen dollars and sixty-six cents (\$416.66), per month" which appeared twice in subd. (i) and once in subd. (j); in subd. (m) deleted from the end of the first sentence an exception clause which read "except that if a member is credited with less

than ten (10) years of state service and, in the opinion of the board of administration is permanently separated from state service by reason of such discontinuance, he shall be paid forthwith ninety per centum (90%) of his accumulated contributions without interest," in the second paragraph of subd. (m) substituted the words "right of revocation" for the words "right or revocation" and added subd. (o).

The 1959 amendment deleted the word "accumulated" before "contributions" in the first sentence of subd. (m) and deleted the words "accumulated normal" in two places before "contributions" in the second sentence of subd. (m).



## CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

Section 68-801. Voluntary service retirement.

68-802. Compulsory retirement.

**68-801. Voluntary service retirement.** (a) Retirement of a member for service shall be made by the board of administration upon his attaining the age of sixty (60) years or more and upon his completion of ten (10) or more years of public service credited under this act and the filing of his written application to the board, subject to the provisions of section 68-901; and provided, however, that the service retirement allowance shall commence on the day following the member's last day of state service or on the first day of the month in which his application is filed with the board of administration, whichever is later.

(b) Notwithstanding any other provision of this act, any person who has been retired for service (as distinguished from disability) under the provisions of this act may be employed in state service in accordance with the laws governing such service in the same manner as a person who has not been so retired.

(c) Any person so employed shall be considered as reinstated from retirement and his retirement allowance shall be cancelled forthwith. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at the time of such reinstatement, and his rate of contribution for future years shall be the same as if he had continued in state service during the period of his retirement. Such person shall receive credit for prior service in the same manner as if he had never been retired.

**History:** En. Sec. 19, Ch. 212, L. 1945; amd. Sec. 7, Ch. 297, L. 1947; amd. Sec. 5, Ch. 186, L. 1951; amd. Sec. 1, Ch. 35, L. 1955; amd. Sec. 4, Ch. 246, L. 1959.

**Amendments**

The 1955 amendment substituted the present subd. (a) for the former one which read "(a) From and after July 1, 1947, until January 1, 1951, every member other than elective officers and officers appointed directly by the governor shall be retired on the first (1st) day of the calendar month next succeeding that in which he attains the age of seventy-five (75) years. Elective officers and officers appointed directly by the governor who have elected to become and are members of the system may continue to serve in office for the duration of the term for which elected or appointed. Every employee of the university who becomes a member, and who, at the time of becoming such member has attained the age of seventy-five (75) years, shall be retired

forthwith. On and after January 1, 1951, every member who at that time has attained the age of seventy (70) years, shall be retired forthwith, and thereafter every such member must be retired on the first (1st) day of the calendar month next succeeding that in which he attains the age of seventy (70) years"; in subd. (b) deleted the words "until October 1, 1947, or the termination of the war in which the United States is now engaged, whichever is earlier," which appeared between the words "act" and "any" and at the end of subd. (b) after the word "retired" deleted the following words "upon the determination of the board of administration, by medical examination, that he is not incapacitated for the duties proposed to be assigned to him." The 1955 amendment also deleted former subds. (d) and (e) for text of which see parent volume.

The 1959 amendment added the proviso to subd. (a).

**68-802. Compulsory retirement.** Any member forced to retire at age sixty-five (65) or over, not having accumulated ten (10) or more years of public service credited under the Montana public employees retirement system may, by filing his written application with the board, elect to re-

ceive a service retirement allowance subject to the provisions of section 68-901, Revised Codes of Montana, 1947.

**History:** En. 68-802 by Sec. 1, Ch. 244, L. 1959.

**Title of Act**

An act providing for a law to be known as section 68-802, Revised Codes of Montana, 1947, providing that members of the public employees retirement system who are forced to retire at age sixty-five or

over, having less than ten years service accumulated, be permitted to receive service retirement benefits; and providing a repealing clause.

**Repealing Clause**

Section 2 of Ch. 244, Laws 1959 repealed all acts or parts of acts in conflict therewith.

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

Section 68-901. Service retirement allowance.

**68-901. Service retirement allowance.** A member upon retirement from service is entitled to receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement.

(b) A pension, purchased by the contributions of the state, or the contracting city, equal to that portion of the annuity purchased by the accumulated normal contributions of the member; and

(c) An additional pension, purchased by the contributions of the state, for members other than persons who are employees of the university at the time of becoming members, and members employed by a contracting city. Such additional pension shall be equal to one-seventieth (1/70) of the member's final compensation, multiplied by the number of years of prior service, except that if a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty-five (65) will purchase at the actual age of retirement.

(d) If a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this section as deferred to age sixty-five (65) will purchase at the actual age of retirement.

(e) An additional pension, purchased by contributions of the state, for members who are also employees of the university at the time of becoming members, said additional pension to accrue from the date of retirement under the system regardless of whether said retirement was prior to the effective date hereof. Such additional pension shall be equal to one-seventieth (1/70) of the average annual compensation earnable by him during the three (3) years preceding retirement, multiplied by the number of years of prior service credited to him, except that if a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty-five (65), will purchase at the actual age of retirement. If, however, a member who is employed by the university at the time of becoming a member, shall not have rendered state service before January 1, 1946,

his additional pension shall be based upon one-seventieth ( $1/70$ ) of the average annual compensation earnable by him during the first year of the state service, or such portion thereof as he may have served before January 1, 1946, multiplied by the number of years of prior service credited to him.

(f) An additional pension on account of prior service, purchased by the contributions of the contracting city for members who are also employees of a contracting city as may be provided for under the contract between the board and the contracting city.

#### MINIMUM GUARANTEE

(g) When a member enters the retirement system with, or without, credit for prior service, and is otherwise eligible for retirement after attaining the age of seventy (70) years, if his final compensation was such that one-half ( $1/2$ ) thereof is in excess of the total of his pension, annuity, and additional pension for prior service, a second additional pension for prior service sufficient to cause his retirement allowance to amount to one-half ( $1/2$ ) of such final compensation shall be paid him on account of prior service, but in no event shall a greater second additional pension be paid than will cause the total retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, to amount to the sum of four hundred eighty dollars (\$480.00) per year. The provisions of this section shall not apply to the members who are employees of a contracting city unless provided for by contract between the board and the contracting city, but if a member be employed by more than one (1) of such cities, his aggregate retirement allowances shall be taken into account in applying said provisions, and said application shall be made as if the member was employed by one or more offices or departments of the state.

#### DISABILITY RETIREMENT

(h) Any member who has not reached seventy (70) years of age shall be retired for disability if incapacitated for the performance of duty as the result of any injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the board of administration of the public employees' retirement system, and said board of administration shall determine whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the discharge of its duty regarding such determination, the board or any member thereof or duly authorized examiner or other duly authorized representative of the board shall have power to conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. If the board determines on the evidence that it obtains and application filed that the disability resulted from injury or disease arising out of and in the course of employment, the said member



shall be retired forthwith and be paid the benefits provided under the retirement system. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired forthwith regardless of age but only after ten (10) years of service to the state, or to the contracting city.

Any compensation paid by the industrial accident board of the state of Montana to any member of the retirement system for total and permanent disability resulting from injury or disease arising out of and in the course of employment shall be deducted from the benefits payable under the retirement system for such disability.

In any case where the industrial accident board makes a determination that disability of a state employee resulted from injury or disease arising out of and in the course of employment and pays compensation thereon for a total and permanent disability, the industrial accident board shall certify its findings and determination to the board of administration of the public employees' retirement system.

(i) Subject to the requirements as to service and cause of disability stated in subdivision (h) of this section, and upon the application of a member or upon the application of the head of the office or department in which such member is or was last employed, or upon application of the university, if such member is an employee of the university, or any other person on behalf of such member, while such member is in state service, within four (4) months after such member's discontinuance of state service, or while such member continuously, from the date of discontinuance of state service to the time of the application or motion, is physically or mentally incapacitated to perform his duties, may apply for, or the board of administration upon its own motion may order, a medical examination to determine the existence of such incapacity. Upon the receipt of such application, the board of administration shall order such medical examination. If the medical examination and other available information show, to the satisfaction of said board, that the member is incapacitated physically or mentally for the performance of his duties in the state service, the said board shall forthwith retire the member for disability. The said board shall secure such medical service and advice as is necessary to carry out the purposes of this section and of sections 68-1001 through 68-1004, and shall pay for such medical services and advice such compensation as the board deems reasonable.

#### DISABILITY RETIREMENT ALLOWANCE

(j) Upon retirement for disability a member who has attained the age of sixty (60) years shall receive a service retirement allowance as provided by subsections (a), (b), (c) of this section. Upon retirement of a member for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum (50%) of his final compensation.

(k) Upon retirement for disability a member who is an employee of the university and who has attained the age of sixty (60) years, shall



receive a service retirement allowance as provided in subdivisions (a), (b), and (c) of this section.

(1) Every other member retired for disability shall receive a retirement allowance which shall consist of:

(i) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(ii) If, in the opinion of the board of administration, such disability is not due to intemperance, wilful misconduct or violation of law on the part of the member, a pension purchased by the contributions of the state, or of the contracting city which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal to (a) ninety per cent (90%) of one-seventieth ( $1/70$ ) of his final compensation multiplied by the number of years of service credited to him, if such disability retirement allowance exceeds one-fourth ( $1/4$ ) of his final compensation; otherwise, (b) ninety per cent (90%) of one-seventieth ( $1/70$ ) of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age sixty-five (65), but in such case the retirement allowance shall not exceed one-fourth ( $1/4$ ) of such final compensation. In no event, however, shall the pension purchased by the contributions of the state or of the contracting city be more than sufficient to make the disability retirement allowance, exclusive of the annuity provided by accumulated additional contributions, exceed the service retirement allowances, exclusive of any annuity purchased by accumulated additional contributions, receivable by the member should he retire at the lowest age at which he would be eligible for service retirement.

(iii) If, in the opinion of the board, the disability is due to intemperance, wilful misconduct or violation of law, on the part of the member, and the annuity to which said member is entitled under subdivisions (j), (k) and (l) of this section, is less than two hundred forty (\$240.00) dollars per year, the board of administration in its discretion, may pay to said member, in one lump sum and in lieu of said annuity, his accumulated contributions.

**History:** En. Sec. 20, Ch. 212, L. 1945; amd. Sec. 6, Ch. 186, L. 1951; amd. Sec. 5, Ch. 246, L. 1959.

#### **Amendment**

The 1959 amendment in subd. (g) inserted the words "or without" the first time they appear and substituted "is otherwise eligible for retirement" for "retires."

#### **Separability Clause**

Section 6 of Ch. 246, Laws 1959 read "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative, or unconstitutional; such decision shall not affect, impair, or invalidate the remaining portions of this act,

but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision, or part directly adjudged to be invalid, inoperative or unconstitutional."

#### **Repealing Clause**

Section 7 of Ch. 246, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 8 of Ch. 246, provided the act should be in effect from and after its passage and approval. Approved March 12, 1959.

#### **Payments from Industrial Accident Board**

Where person was entitled to benefits under both the disability retirement act

and the workmen's compensation act, and the award of the industrial accident board was for permanent partial disability, the retirement board was without authority to deduct such amount from the retirement

allowance since it is only authorized where the award of the industrial accident board is for total and permanent disability. State ex rel. Ebel v. Schye, 130 M 537, 305 P 2d 350, 354.

#### CHAPTER 10—REINSTATEMENT—REDUCTION OF ALLOWANCE— OPTIONAL MODIFICATION OF ALLOWANCES

Section 68-1001. Reinstatement from disability retirement.

68-1002. Reduction of allowance when employed.

68-1003. Effect of refusal of beneficiary to submit to medical examination.

**68-1001. Reinstatement from disability retirement.** (a) The board of administration, may, at its pleasure, require any disability beneficiary to undergo medical examination. Such examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of said beneficiary or other place mutually agreed upon. Upon the basis of such examination the board shall determine whether said disability beneficiary is still incapacitated, physically or mentally, for service in the office or department of the state or of the contracting city, where he was employed and in the position held by him when retired for disability, or for duties proposed to be assigned to him. If the board of administration determines that said beneficiary is not so incapacitated, his retirement allowance shall be cancelled forthwith. If he was an employee of the state or of the university, he shall be reinstated to the position held by him when retired for disability or to a position in the same classification with duties within his capacity. If he was an employee of a contracting city, the board shall notify the proper official of said city that said disability has been terminated and that said person is eligible for reinstatement to duty. The fact that said person was retired for disability shall not prejudice any right to reinstatement to duty which he may have or claim to have.

(b) In the case of such a member who is an employee of a contracting city, and who for any reason is not so reinstated or is not re-employed by said city in a position subject to the retirement system, he shall be paid an amount which is the actuarial equivalent of his annuity at that time, as based on a disabled life, but said amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability.

(c) Should a disability beneficiary re-enter the state service and be eligible for membership in the retirement system in accordance with section 68-202, his retirement allowance shall be cancelled and he shall immediately become a member of the retirement system, his rate of contribution for future years being that established for his age at the time of such re-entry. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at that time, as based on a disabled life, but such amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability. Such member shall receive credit for prior service in the same manner as though he had never been retired for disability.

**History:** En. Sec. 21, Ch. 212, L. 1945; amd. Sec. 6, Ch. 92, L. 1955.

**Amendment**

The 1955 amendment deleted the words "under the age of sixty (60)" which appeared between the words "beneficiary" and "to" in the first sentence.

**Finding that Person No Longer Incapacitated**

Where there was substantial evidence to support the trial court's implied finding

that the retirement board acted capriciously and arbitrarily in finding that a person was no longer incapacitated that finding will be upheld on appeal; however, this affirmation does not have the effect of ousting the board from jurisdiction to so find in the future. State ex rel. Ebel v. Schye, 130 M 537, 305 P 2d 350, 358. Special concurring opinion in denying petition for rehearing.

**68-1002. Reduction of allowance when employed.** Should a disability beneficiary engage in a gainful occupation not in the state service or should he re-enter the state service in a capacity ineligible for membership in the retirement system, the board of administration shall reduce the amount of his monthly pension to an amount which, when added to the compensation earned monthly by him in such occupation, shall not exceed the amount of his monthly compensation at the time of his retirement. Should the earning capacity of such beneficiary be further altered, the board may further alter his pension to an amount which shall not exceed the amount upon which he was originally retired, but which, subject to such limitation, shall equal, when added to the compensation earned by him, the amount of his compensation at the time of his retirement.

**History:** En. Sec. 22, Ch. 212, L. 1945; amd. Sec. 7, Ch. 92, L. 1955.

**Amendment**

The 1955 amendment deleted the words "prior to attaining age sixty (60)" which appeared between the words "beneficiary" and "engage" in the first sentence and

also deleted a former last sentence which read "When such a disability beneficiary reaches age sixty (60), his retirement allowance shall be made equal to the amount upon which he was originally retired, and shall not again be modified for any cause."

**68-1003. Effect of refusal of beneficiary to submit to medical examination.** Should any disability beneficiary refuse to submit to medical examination, his pension may be discontinued until his withdrawal of such refusal, and should such refusal continue for one (1) year his retirement allowance may be cancelled.

**History:** En. Sec. 23, Ch. 212, L. 1945; amd. Sec. 8, Ch. 92, L. 1955.

between the words "beneficiary" and "refuse."

**Amendment**

The 1955 amendment deleted the words "under age sixty (60)" which appeared

## CHAPTER 11—DEATH BENEFITS

### Section 68-1101. Death benefit.

**68-1101. Death benefit.** Upon the death before retirement of a member while in the state service, or within four (4) months after the discontinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which if there is a surviving wife or surviving children under eighteen (18) years of age, shall be paid in monthly install-



ments and to the surviving wife and children as presented therein; otherwise such death benefit shall be paid to his estate, or to such person having an insurable interest in his life as he has nominated by written designation duly executed and filed with the retirement board; provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a joint life annuity option as provided in section 68-1005, Revised Codes of Montana, 1947, as amended, or (b) who has received a disability retirement allowance as provided for in paragraphs (i) through (l) of section 68-901, Revised Codes of Montana, 1947, as amended, for a period of four (4) months immediately preceding death. Such death benefit shall consist of:

(a) His accumulated contributions, and in addition thereto,

(b) An amount, provided from contributions by the state, or by a contracting city, which shall be equal to one-twelfth (1/12th) of the annual compensation earnable by the deceased during the twelve (12) months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed fifty (50) per centum of such compensation.

(c) A member, or a beneficiary after death of a member, may elect, by written designation, duly executed and filed with the board of administration to have the death benefit provided in clauses (a) and (b) paid in monthly installments, fixed in number or amount, all subject to such rules and regulations as the board may adopt. Regular interest shall be credited on the unpaid balance of such benefit, at rates then in use under the system as adopted by the board from time to time.

(d) If compensation is awarded by the industrial accident board of the state of Montana by reason of a finding that the member's death resulted from injury or disease arising out of or in the course of employment, the death benefit payable hereunder shall be limited to a refund of the member's accumulated contributions. In any case where the industrial accident board makes a determination that death of a state employee resulted from injury or disease arising out of and in the course of employment and pays compensation therefor, the industrial accident board shall certify its findings and determination to the board of administration of the public employees' retirement system.

(e) Survivorship provision. In lieu of the benefits provided in (a) and (b) above, if the deceased member is qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity is to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions; and provided that this provision be retroactive for all members who had an option for a lesser retirement allowance filed in the retirement system office at the time of their death.

(f) The beneficiary named in (e) above shall have the right within ninety (90) days of the member's death to elect to receive a death benefit instead of the benefit designated in (e) above.

**History:** En. Sec. 26, Ch. 212, L. 1945; amd. Sec. 7, Ch. 186, L. 1951; amd. Sec. 2, Ch. 225, L. 1953; amd. Sec. 9, Ch. 92, L. 1955.

#### Amendment

The 1955 amendment substituted the words "joint life annuity option" for the

words "lesser optional retirement allowance" in the proviso clause of the first paragraph and inserted the word "a" between the words "to" and "refund" in the first sentence of subd. (d).

### CHAPTER 13—MISCELLANEOUS PROVISIONS

Section 68-1303. Retirement fund exempt from execution, garnishment, attachment or assignment.

68-1306. Retired members not eligible for retirement allowance while in state service.

68-1308. Maximum salary considered.

**68-1303. Retirement fund exempt from execution, garnishment, attachment or assignment.** The right of a person to a pension, an annuity or a retirement allowance to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this act and the moneys in the fund created under this act shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever, and shall be unassignable except as in this act specifically provided.

**History:** En. Sec. 30, Ch. 212, L. 1945; amd. Sec. 10, Ch. 92, L. 1955.

#### Amendment

The 1955 amendment inserted a "comma" after the word "pension" the

second time it appears, changed the word "provision" to "provisions" and inserted the words "state or municipal taxes" between the words "attachment" and "or."

**68-1306. Retired members not eligible for retirement allowance while in state service.** No person who has been retired for service or disability shall be paid any retirement allowance during the time which he receives compensation for service rendered by him to the state or to a contracting city after the date of his retirement.

**History:** En. Sec. 33, Ch. 212, L. 1945; amd. Sec. 11, Ch. 92, L. 1955.

#### Amendment

The 1955 amendment substituted the words "disability shall be paid any re-

tirement allowance during the time which he receives compensation for service" for the words "disability and who receives a retirement allowance under the retirement system shall be paid for service."

**68-1308. Maximum salary considered.** From and after July 1, 1955, for the purpose of computing the total amounts of compensation of members under the provisions of section 68-1307, all compensation shall be used.

**History:** En. Sec. 36, Ch. 212, L. 1945; amd. Sec. 12, Ch. 92, L. 1955.

#### Amendment

The 1955 amendment inserted the phrase "From and after July 1, 1955" at the beginning of this section and substituted the words "all compensation shall be used" for the words "the compensation of every member who received in excess

of four hundred sixteen dollars and sixty-six cents (\$416.66) per month shall be computed as four hundred sixteen dollars and sixty-six cents (\$416.66) per month."

#### Separability Clause

Section 13 of Ch. 92, Laws 1955 read "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court

of competent jurisdiction to be invalid, inoperative, or unconstitutional, such decision shall not affect, impair, or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision, or part directly adjudged to be invalid, inoperative or unconstitutional."

**Repealing Clause**

Section 14 of Ch. 92, Laws 1955 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 15 of Ch. 92, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.



## TITLE 69—PUBLIC HEALTH AND SAFETY

- Chapter 1. State board of health—creation—powers and duties, 69-105, 69-105.4, 69-127.
2. Industrial hygiene, 69-201.
  3. Tuberculosis control, 69-301, 69-304 to 69-319.
  4. Dental health, 69-401, 69-403, 69-404.
  5. Vital statistics, 69-502, 69-506, 69-519.
  7. County boards of health and county health officers—duties, 69-701.
  9. State epidemiologist—employment and powers, 69-901.
  11. Venereal disease control, 69-1101, 69-1102.
  13. Public and other water supplies—control by state board of health, 69-1326 to 69-1341.
  15. Boiler inspection—engineers license, 69-1512, 69-1516.
  18. Public safety in case of fire—fire escapes and apparatus—inspections, 69-1807.
  24. Homes for the aged—inspection, 69-2401.
  27. Fireworks regulation, 69-2701, 69-2702, 69-2704, 69-2706.
  28. Refrigerated lockers—regulation of, 69-2802 to 69-2805, 69-2807, 69-2808, 69-2810, 69-2813.
  30. Montana hospital survey and construction act, 69-3002 to 69-3004, 69-3006, 69-3007, 69-3009, 69-3010, 69-3012, 69-3015, 69-3016, 69-3018.
  32. State board of health—maternal and child health services—educative program—school nurses—supervision by board—authority of counties and school boards—services for crippled children—education for children and adults in use and abuse of narcotics, 69-3201 to 69-3205.
  33. Geophysical exploration, 69-3301 to 69-3308.
  34. Sanitarians, 69-3401 to 69-3409.
  35. Motorboat and vessel regulation, 69-3501 to 69-3518.

### CHAPTER 1—STATE BOARD OF HEALTH—CREATION— POWERS AND DUTIES

- Section 69-105. Functions, powers and duties of board.
- 69-105.4. Laboratory services.
- 69-127. Persons subject to epileptic type seizures—report of physicians required—recommendations as to licensing persons to drive.

69-105. (2448) Functions, powers and duties of board. The state board of health of the state of Montana (which may, for brevity, be referred to as the state board of health) shall have general supervision of the interests of health and life of the citizens of the state. The board shall continuously study the vital statistics of the state, and endeavor to make intelligent use of the records of births, deaths and sickness among the people; it shall make sanitary investigations and inquiries regarding the causes of disease, and especially communicable diseases and epidemics; the causes of mortality, and the effects of localities, employments, conditions, ingesta, habits, and other factors and circumstances affecting the health of the people; it shall gather such information in respect to all these matters as it may deem proper for diffusion among and use by the people; it shall cause to be made an inspection at least once in each year, and at such other times as it may be directed to do so by the governor, of all public institutions of the state of Montana, and make a report as to their sanitary conditions and environment, with suggestions and recommendations to the governor and to their respective boards of directors or trustees, visitors, officers and administrators for amelioration or abatement of conditions and factors adverse to health, and for correction, betterment

and improvement in circumstances or practices affecting health, at such institutions; and it shall be the duty of the executive officers and administrators, and other persons in the immediate charge of such institutions to furnish all the facilities necessary for a thorough investigation and inspection at such institutions; the board shall, when requested, or when it shall deem best, advise officers of the government, or other boards within the state, in regard to location, drainage, water supply, disposal of excreta, heating, plumbing, sewerage systems, and ventilation of any public institution or building; it shall have general oversight and direction of the enforcement of the statutes respecting the preservation of the health and the prevention of the spread of communicable diseases; it shall have general supervision of the work of local and county board of health, hereinafter defined, and it shall, at the opening of each session of the legislative assembly, submit to the assembly, through the governor, a full report of all of its investigations, and such suggestions and recommendations which result from such investigations, and, also, such additional information and recommendations in the matter of public health in this state, as it shall deem proper.

The state board of health shall as a board exercise all powers and all duties found, conferred, prescribed or delegated, in any of the codes, session laws, and statutes of the state of Montana, which are, or have been delegated to the state board of health, as such, or which are, or have been, delegated, or assumed to be delegated, to any division, director or chief of division, bureau, or other functional unit, appointee, or employee, of the board, by acts of the legislative assembly, and all divisions, sections, units, directors, appointees and employees of the board shall exercise authority at all times in subordination to, and in compliance with, the orders and directives of the board in its administration of such laws, functions, powers and duties. The state board of health, as such is hereby charged with the responsibility of exercising the powers and functions, and discharging, executing and carrying out the duties, heretofore, or at any time hereafter, delegated to it by the legislative assembly, but nothing herein contained shall prevent the board from assigning the execution of its powers and duties, in specified detail, to its appointees and employees, subject at all times to the continuing control of the board. To the end of efficient administration, the board shall have power to direct the necessary internal organization of all employees, appointees, and functional divisions, units, and sections of the board. The board shall properly and effectively integrate and coordinate all personnel and services under its jurisdiction, in accord with efficient administrative, professional and technical practices, without regard to the title of persons, positions or functional divisions, sections or units which may have heretofore been authorized or recognized; provided, however, that nothing in this act shall be construed (a) as authorizing the exercise of powers or the discharge of duties not delegated to the board by act of the legislative assembly, or reasonably implied from delegated powers, or (b) as authorizing the board to create, establish or set up functions not delegated to it by acts of the legislative assembly. In all cases where the terms "divisions," "section" or "unit" of the board is referred to in the laws of this state, such terms shall be construed

as referring to functions and powers of the board, and not to any numerical subdivision among the members of the board, or, in any case, to appointees, or employees of the board.

**History:** Ap. p. Sec. 2, p. 81, L. 1901; amd. Sec. 2, Ch. 110, L. 1907; Sec. 1475, Rev. C. 1907; re-en. Sec. 2448, R. C. M. 1921; amd. Sec. 1, Ch. 264, L. 1955. Cal. Pol. C. Sec. 2979.

#### Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

**69-105.4. Laboratory services.** The state board of health is hereby authorized and directed to organize and administer such laboratory services as it deems necessary to carry out any duties and responsibilities in the field of public health which have been delegated to it by the legislative assembly of Montana; and for such purposes to provide equipment, facilities, and qualified personnel, the technical qualifications of which personnel the board shall determine and, as may be permitted from time to time within appropriations by the legislative assembly. The laboratory services shall be organized so as to provide for technical procedures in the fields of bacteriology, serology, chemistry, and toxicology, with particular reference to subjects under the board's powers as assigned to it by the laws of Montana including water supplies, sewage and waste disposal, foods, drugs, poisons, insecticides, fungicides, rodenticides, industrial hygiene, communicable disease and other diseases or conditions which may from time to time afflict mankind in the state of Montana and be susceptible to control, suppression or eradication, or require study and analysis to determine the existence of circumstances which are, may be, or are alleged to be, detrimental to health.

**History:** En. Sec. 2, Ch. 264, L. 1955.

#### 69-106. (2449) Repealed.

##### Repeal

This section (Sec. 3, Ch. 110, L. 1907), relating to meetings of the state board of

health, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

#### 69-108. (2451) Repealed.

##### Repeal

This section (Sec. 7, Ch. 110, L. 1907), relating to compensation and expenses of

members of the state board of health, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

#### 69-121. (2458) Quarantine measures.

##### References

Cited or applied in *Ruona v. City of Billings*, — M —, 323 P 2d 29, 31.

**69-127. Persons subject to epileptic type seizures—report of physicians required—recommendations as to licensing persons to drive.** Whenever a physician or other practitioner authorized to diagnose epilepsy or epileptic type seizures treats or attends any person diagnosed as being subject to epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic, said physician or other practitioner shall report the full name, address, sex and date of birth of the person so diagnosed immediately to the local health officer in writing. The local health officer shall in turn



forward such reports to the executive officer of the state board of health not later than Saturday of each week. The executive officer of the state board of health shall forward the reports to the Montana highway patrol board at least once each month. The executive officer of the state board of health may make recommendations to the said board as to the licensing of the person or persons so reported to drive or operate motor vehicles on the public highways of the state of Montana and said officer may require the reported person to authorize a doctor who is familiar with such case to forward a certificate or case report to the executive officer of the state board of health, or require that a physical examination be made by a medical doctor designated by the executive officer of the state board of health and forwarded to the executive officer of the state board of health within ten (10) days. The person reported as being subject to such seizures or lapse of consciousness or control may himself or herself cause a written report concerning his or her affliction or disability to be forwarded to the executive officer of the state board of health by a doctor of his choice. All reports required by this section shall be confidential and used by the board solely to determine the qualifications of such persons to operate motor vehicles upon the highways of this state.

**History:** En. Sec. 1, Ch. 59, L. 1955.

#### **Title of Act**

An act relating to the duty of physicians and other practitioners to report to the local health officer every person who is diagnosed as being subject to epileptic type seizures or similar disorders characterized by lapse of consciousness or control; providing for the local health officer to forward such reports to the executive officer of the state board of health; providing for the executive officer of the state board of health to forward such reports

to the Montana highway patrol board; providing that all such reports are confidential; repealing all acts or parts of acts in conflict herewith.

#### **Repealing Clause**

Section 2 of Ch. 59, Laws 1955 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 59, Laws 1955 provided the act should be in effect from and after July 1, 1955.

## **CHAPTER 2—INDUSTRIAL HYGIENE**

### **Section 69-201. Industrial hygiene.**

**69-201. Industrial hygiene.** The state board of health, as such, shall possess, exercise and administer all of the powers, functions and authority, and shall carry out, discharge and execute all of the duties, in the field of industrial hygiene, as set forth in sections 69-202, 69-203, 69-204, 69-205, 69-206, 69-207, and 69-208, Revised Codes of Montana, 1947. The expression in such sections "division of industrial hygiene" is hereby defined to mean the state board of health of the state of Montana, as a board, in the field of industrial hygiene as prescribed by said sections.

**History:** En. Sec. 1, Ch. 127, L. 1939; amd. Sec. 3, Ch. 264, L. 1955.

#### **Amendment**

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

## CHAPTER 3—TUBERCULOSIS CONTROL

- Section 69-301. Tuberculosis control.  
 69-304. Statement of policy.  
 69-305. Definitions.  
 69-306. Rules and regulations.  
 69-307. Application to require person to submit to procedures for diagnosis—application to remove to facility persons who are menace to public health.  
 69-308. Applications where person refuses to submit to procedures for diagnosis or refuses to enter or stay in hospital.  
 69-309. Hearing on application—time—summons.  
 69-310. Order of court after hearing—commitment or requiring examination—dismissal.  
 69-311. Certified copies of order of commitment—retaining person in facility—act not to require medical or surgical treatment without consent.  
 69-312. Warrant to transport person committed—transportation of female.  
 69-313. Application for release—time for hearing—hearing—order.  
 69-314. Finding that person no longer a public health menace—discharge—filing.  
 69-315. Transfer of person to another hospital—authority—notice.  
 69-316. Records of court—costs and expenses—payment.  
 69-317. Expenses of removal to facility—charge for maintenance, care and treatment.  
 69-318. Quarters and facilities.  
 69-319. Effect of act on existing laws relating to communicable diseases and tuberculosis.

**69-301. Tuberculosis control.** The state board of health is hereby invested with the function of studying and collecting all relevant data pertaining to the appearance and incidence of tuberculosis within this state, and with promulgating such measures and practices as may make for its control, and the recovery of persons afflicted thereby, and to such ends, the board shall possess, exercise, and administer all of the powers, and shall carry out, discharge and execute all of the duties, in the field of tuberculosis control, as set forth in section 69-303, Revised Codes of Montana, 1947. The board shall appoint a technically trained and competent person who shall exercise the functions and carry out the duties assigned to him by the board in compliance with its orders, rules and regulations.

**History:** En. Sec. 1, Ch. 170, L. 1945;  
 amd. Sec. 4, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**69-302. Repealed.****Repeal**

This section (Sec. 2, Ch. 170, L. 1945), relating to the appointment of a state di-

rector of tuberculosis control, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

**69-304. Statement of policy.** Whereas, a comprehensive program of public health in the field of tuberculosis treatment has been carried out for years by governmental and private groups in this state, and whereas the failure of certain persons known to have tuberculosis in a communicable state and certain persons known to have been exposed to tuberculosis in a communicable state to comply with the laws of the state of Montana, and applicable rules and regulations of the Montana state board of health, pertaining to tuberculosis control constitutes a menace to public health and welfare, and adversely affects the citizens of the state, it is hereby

declared to be the public policy of this state to protect the citizens of this state from persons having tuberculosis in a communicable state, to provide a comprehensive program in the public interest for the prevention, abatement and eradication of this disease, to provide effective means for the carrying out and enforcement of such program, and to provide for cooperation with agencies of this state and the federal government in carrying out these objectives.

**History:** En. Sec. 1, Ch. 259, L. 1959.

#### **Title of Act**

An act to protect the citizens of Montana from persons having tuberculosis in a communicable state; defining the terms "facility" and "tuberculosis"; providing for promulgation of rules and regulations by the state board of health; allowing any board of health to apply to state district court for order of commitment to a facility; specifying the procedure therefor;

providing for commitment of persons found to have tuberculosis in a communicable state; permitting patient to apply to district court for release from facility; providing for release when confinement of such person is no longer required; establishing fees and providing for payment of expenses by the county; requiring state board of examiners and counties to provide and maintain facilities; and providing for an effective date.

**69-305. Definitions.** For the purpose of this act, the following words and phrases shall have the meaning ascribed to them in this section: (a) "Facility" means structures and equipment kept, used, maintained or contracted for by the state of Montana or local or federal agencies for the purpose of housing persons with communicable tuberculosis. (b) "Tuberculosis" means a disease caused by the tubercle bacillus that is characterized by the production of tuberculous lesions.

**History:** En. Sec. 2, Ch. 259, L. 1959.

**69-306. Rules and regulations.** The Montana state board of health shall promulgate rules and regulations, which rules and regulations shall be the basis for determination of the conclusive evidence of tuberculosis in a communicable state.

**History:** En. Sec. 3, Ch. 259, L. 1959.

**69-307. Application to require person to submit to procedures for diagnosis—application to remove to facility persons who are menace to public health.** The board of health of a city, county, district or state may, upon the recommendation of either a doctor of medicine licensed in Montana or a qualified doctor of medicine employed in the federal service in this state or the officer of health of the city, county, district or state, apply to the district court of the county in which the person resides or may be found, for an order (a) to require any person who is suspected on reasonable grounds of having tuberculosis in a communicable state or of having been exposed to communicable tuberculosis to submit to procedures required by the rules and regulations of the state board of health to establish the diagnosis. (b) To remove to the facility any person suffering from tuberculosis, in a communicable state, who has refused to enter, or absents himself from any hospital against the medical advice of the treating physician, health officer, or superintendent of facility, when in the opinion of the board of health of the city, county, district, or state such person is a menace to public health.

**History:** En. Sec. 4, Ch. 259, L. 1959.



**69-308. Applications where person refuses to submit to procedures for diagnosis or refuses to enter or stay in hospital.** If the board of health of the city, county, district, or state finds the person a public menace under this act, it shall file with the district court an application verified by its authorized representative, alleging (a) that such person is suspected on reasonable grounds of having tuberculosis in a communicable state or of having been exposed to communicable tuberculosis and has refused to submit to procedures required by the rules and regulations of the state board of health to establish the diagnosis, or (b) that such person is suffering from tuberculosis in a communicable state, is a menace to public health and has refused to enter or has absented himself from a tuberculosis hospital against medical advice of the treating physician or the health officer. Such application shall also state the names of witnesses by which the facts alleged therein may be proved, at least one of whom shall be a licensed doctor of medicine.

**History:** En. Sec. 5, Ch. 259, L. 1959.

**69-309. Hearing on application—time—summons.** Upon the filing of the application provided for in this act, the district court shall hold a hearing on the application not less than three days nor more than seven days after personal service on the individual. A copy of the application together with summons stating time and place of hearing shall be served upon the person three days prior to the time set for hearing. The hearing shall be held in the district court. Except for good cause shown the district court has the authority to set the time for the hearing to be held in such other place in the county as conditions may require. On the day set for hearing the district judge shall proceed to examine the witness in attendance and further witnesses that such judge desires to call.

Summons shall be returned to the office of the district court at or before the time set for the hearing with the time and manner of service endorsed thereon.

**History:** En. Sec. 6, Ch. 259, L. 1959.

**69-310. Order of court after hearing—commitment or requiring examination—dismissal.** If upon hearing the district court shall find the essential allegations of the application true, and that the person has communicable tuberculosis and is a menace to public health, the said court shall then enter a commitment order committing the person to a facility. If, upon hearing, the district court shall find the essential allegations of the application true and that reasonable grounds exist to suspect that the person has communicable tuberculosis, or has been exposed to communicable tuberculosis, and is a menace to public health, the said court shall enter an order requiring the person to submit to an examination in accordance with the applicable rules and regulations of the Montana state board of health. If the person fails to comply with the order of the court for examination within the time set by said court then the court shall enter a commitment order committing the person to a facility. If the district court at the time of hearing finds the allegations of the application not sustained by the evidence, the application shall be dismissed and the person discharged.

**History:** En. Sec. 7, Ch. 259, L. 1959.

**69-311. Certified copies of order of commitment—retaining person in facility—act not to require medical or surgical treatment without consent.** If the district court enters an order committing the person to a facility, certified copies thereof shall be delivered to the superintendent of the facility to which the person is committed and to the board of health filing the petition. Any person committed under the provisions of this act, shall remain in the facility to which committed until discharged. No person committed under the provisions of this act shall be required to submit to medical or surgical treatment in the facility to which he is committed without his written consent, or, if incompetent, without the written consent of his next of kin, or duly appointed guardian, or if a minor, without the written consent of his natural or appointed guardian. The superintendent of such facility and his assistants may use such reasonable means as may be necessary to keep such person within the facility and to require him to comply with the rules and regulations promulgated by the facility for the care of such persons.

**History:** En. Sec. 8, Ch. 259, L. 1959.

**69-312. Warrant to transport person committed—transportation of female.** When an order committing a person is issued to a facility, the district court shall also issue a warrant directed to the sheriff of the county in which the proceedings are held to transport such person to the designated facility. In no case shall a female be so transported unless she is accompanied by her husband, brother, father, or son, or a female attendant of reputable character and mature judgment.

**History:** En. Sec. 9, Ch. 259, L. 1959.

**69-313. Application for release—time for hearing—hearing—order.** Any time after one hundred eighty (180) days any patient committed to a facility under this act may apply to the district court in which commitment order was entered to order his release for the reason that he is no longer suffering from tuberculosis in a communicable state and he therefore is no longer a menace to public health. In not less than three (3) days nor more than seven (7) days after service of the notice the district court shall hold a hearing to determine whether the person committed is still a menace to public health by reason of his tuberculous condition. After a hearing the district court shall enter an order releasing the person from his commitment, if applicant's disease is found to be non-communicable, and directing his discharge; if the district court shall not so determine, it shall enter an order dismissing the application for the release and remand the person to the facility to which he was committed.

**History:** En. Sec. 10, Ch. 259, L. 1959.

**69-314. Finding that person no longer a public health menace—discharge—filing.** If the superintendent of the facility and the board of health who made the initial application find and concur that the person committed is no longer a menace to public health by reason of his tuberculous condition, they shall file with the district court a notice containing this finding and notice of date of release of the person from the facility.

**History:** En. Sec. 11, Ch. 259, L. 1959.

**69-315. Transfer of person to another hospital—authority—notice.** When it is in the best interest of the person, the superintendent of the facility may authorize the transfer of the person from the facility to which he was committed to another state, county, city, federal or to another hospital approved by the state board of health. The district court and the state board of health who made the initial application shall be notified of this transfer.

**History:** En. Sec. 12, Ch. 259, L. 1959.

**69-316. Records of court—costs and expenses—payment.** The records of the district court shall contain a complete record of all proceedings had under the provisions of this act. The cost and expenses to be paid shall be as follows:

(a) To sheriffs or their deputies, the same fees allowed for similar service in the district court.

(b) To the doctors of medicine, not to exceed two, such fee as the district court may in its discretion direct.

(c) To other witnesses the same fees and mileage as for attendance in the district court; provided all witnesses fees shall be paid upon the approval of the district judge to the person other than the sheriff or his deputies for taking a person committed to a facility or removing one therefrom upon the warrant of the district judge, the actual necessary expense incurred specifically itemized and verified by his oath and approved by the district judge.

Such fees and expense, together with all costs in the district court, shall be paid from the treasury of the county from which such person is committed.

**History:** En. Sec. 13, Ch. 259, L. 1959.

**69-317. Expenses of removal to facility—charge for maintenance, care and treatment.** The expenses of removal of any person to a facility shall be borne by the county from which such person was committed. These expenses shall be paid from the general fund appropriations of the county or from the funds derived from such as may be designated. The charge for the care, treatment, and maintenance of the person at the state sanitarium shall be at the rate determined paid for according to existing law.

**History:** En. Sec. 14, Ch. 259, L. 1959.

**69-318. Quarters and facilities.** The state board of examiners shall provide and maintain at the state facility, Montana state tuberculosis sanitarium, quarters as may be necessary to carry out the provisions of this act. The counties shall provide and maintain facilities as may be necessary to carry out the provisions of this act.

**History:** En. Sec. 15, Ch. 259, L. 1959.

**69-319. Effect of act on existing laws relating to communicable diseases and tuberculosis.** This act is intended to supplement existing laws relating to communicable tuberculosis. Nothing in this act shall modify, supersede, or change any existing laws relative to communicable disease.

**History:** En. Sec. 16, Ch. 259, L. 1959.

**Effective Date**

Section 17 of Ch. 259, Laws 1959 read  
"This act shall be in full force and effect  
from and after the first day of July, 1959."



## CHAPTER 4—DENTAL HEALTH

- Section 69-401. Dental health.  
 69-403. Duties, director of dental health.  
 69-404. Rules and regulations by state board of health.

**69-401. Dental health.** The state board of health is hereby directed and authorized to develop and administer a program of dental public health. The state board of health shall appoint a full-time director of dental health, qualified as prescribed by section 69-402, Revised Codes of Montana, 1947, and who shall be under its direct supervision. The state board of health shall also provide such other staff and facilities as are needed in carrying out the purposes of this act.

**History:** En. Sec. 1, Ch. 125, L. 1943;      **Amendment**  
 amd. Sec. 5, Ch. 264, L. 1955.

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

**69-403. Duties, director of dental health.** The duties of the director of dental health shall be the development and promotion of those activities which result in the protection and improvement of the dental health of the people of the state.

**History:** En. Sec. 3, Ch. 125, L. 1943;      **Amendment**  
 amd. Sec. 6, Ch. 264, L. 1955.

The 1955 amendment substituted "director" for "division."

**69-404. Rules and regulations by state board of health.** The state board of health shall adopt rules and regulations for the proper administration of this act. The state board of health through the director of dental health shall have supervision over the dentists employed by municipalities, counties, health departments, school districts and state institutions.

**History:** En. Sec. 4, Ch. 125, L. 1943;      "health departments"; and substituted  
 amd. Sec. 7, Ch. 264, L. 1955.      "state institutions" for "custodial institutions."

**Amendment**

The 1955 amendment substituted "director" for "division"; inserted the words

## CHAPTER 5—VITAL STATISTICS

- Section 69-502. Vital statistics functions of board.  
 69-506. Duties of state registrar.  
 69-519. Accounting for fees.

**69-502. Vital statistics functions of board.** The state board of health shall, as one of its functions:

(1) Establish and identify an appropriate organizational unit under the board with the proper personnel, equipment and office space, to gather, collect, register, record, compile, preserve, analyze, use and make available for public use, vital statistics, as defined, and as set forth and referred to, in sections 69-501 through 69-539, inclusive, Revised Codes of Montana, 1947, except that the expression "Bureau of Vital Statistics," as used in any of said sections may be changed by the board, in establishing and identifying such organizational unit;

(2) Install a statewide system of vital statistics;

(3) Make and may amend necessary regulations, give instructions and prescribe forms for gathering, collecting, registering, recording, compiling, preserving, using and making use of public vital statistics;

(4) Have charge and be the official custodian of all the files and records gathered under the provisions of said sections 69-502 through 69-539, Revised Codes of Montana, 1947, and as the same may be amended and supplemented; and

(5) Enforcing this act, and the regulations made pursuant thereto.

**History:** En. Sec. 2, Ch. 44, L. 1943;  
amd. Sec. 8, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**69-506. Duties of state registrar.** The state registrar shall, under such rules and regulations as the board may prescribe keep and have immediate charge and custody, for the board, and subject to complete access by it at any time, its files and records in the field of vital statistics, aid the board in the enforcement of this act and the rules and regulations promulgated by it and in supervising local registrars and other persons required to comply with this act. The state registrar shall prepare for the board a biennial report of the administration of this act, in such detail and form as the board may prescribe.

**History:** En. Sec. 6, Ch. 44, L. 1943;  
amd. Sec. 9, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**69-519. Accounting for fees.** The state board of health shall designate one (1) or more employees who shall, subject to the continuing supervision of the board, keep, in such detail and form as the board may prescribe, an account of all fees received, and remit such fees to the state treasurer in accordance with the laws of Montana. The board shall charge one (1) of such employees with primary responsibility for the receipt of, accounting for, and remittance of such fees, and the employees so designated with primary responsibility shall give a fidelity bond to the state of Montana, with corporate surety which bond and surety shall be approved by the board, in the penal sum of three thousand dollars (\$3,000.00) for the proper keeping, accounting and remittance of all such fees. Other designated employees may be required by the board to give to the state of Montana similar bonds in such lesser amounts as the board may deem proper and adequate.

**History:** En. Sec. 19, Ch. 44, L. 1943;  
amd. Sec. 10, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment completely re-wrote this section. For section prior to amendment see parent volume.

## CHAPTER 6—LOCAL BOARDS OF HEALTH IN CITIES AND TOWNS— CREATION—POWERS AND DUTIES

**69-608. (2471) Police officer must assist health officer when requested.**

**Operation and Effect**

Police officers were not liable to a dog owner for damages where the owner's dog was killed by the officers acting under

an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, —M —, 323 P 2d 29, 31.

## CHAPTER 7—COUNTY BOARDS OF HEALTH AND COUNTY HEALTH OFFICERS—DUTIES

## Section 69-701. County boards of health.

**69-701. (2473) County boards of health.** There is hereby established in each county a board of health which is designated in this act as the "County Board of Health," which shall consist of the board of county commissioners and one physician legally authorized to practice medicine and surgery in this state, who must be appointed by the board of county commissioners. Said physician when so appointed shall be ex-officio secretary of the county board of health and the county health officer, and shall hold office at the pleasure of the board. The county health officer shall have the same powers and perform the same duties in the county of his appointment, outside of the limits of incorporated towns or cities, as are hereinabove provided for a local health officer within the corporate limits of a town or city, and his salary shall be fixed by the board of county commissioners at an amount commensurate to the work devolving upon him, and when such county health officer, in the actual discharge of his official duties, is required to travel greater than two (2) miles from the county seat of the county he represents, he shall receive his actual traveling expenses. Said board may also, when in its judgment the interests of the county require, appoint a deputy county health officer who shall be located at a point where he can serve people residing in a portion of said county in a manner appropriate to their needs. The boards of county commissioners of two (2) or more adjacent counties may also, when in their opinion the needs of the people of the county will be better served by such an arrangement, make contractual agreements with one (1) or more existing boards of health for services for any part of the county adjacent to the jurisdictional area of such board of health. For these services, the board of county commissioners for the contractual area are authorized to provide funds from the general fund of such county. Whenever such contracts are made such boards of health are declared to be the board of health for the contractual area with all the powers and duties of such boards of health.

**History:** En. Sec. 19, Ch. 110, L. 1907; Sec. 1492, Rev. C. 1907; re-en. Sec. 2473, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1957. For earlier acts see sections 163 to 167, 5th Division Compiled Statutes, 1887.

**Amendment**

The 1957 amendment added all that

portion of this section beginning with the fourth sentence.

**Repealing Clause**

Section 2 of Ch. 111, Laws 1957 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 9—STATE EPIDEMIOLOGIST—EMPLOYMENT AND POWERS

## Section 69-901. State epidemiologist—employment and powers.

**69-901. (2540) State epidemiologist—employment and powers.** The state board of health of the state of Montana is hereby authorized and empowered to employ a regularly qualified physician and surgeon licensed to practice such professions in the state of Montana, and who, in addition



to such qualifications shall be a technically trained and competent public health physician; such person may be described by the board as state epidemiologist or described and referred to as disease control officer or by such other title as the board may designate.

**History:** En. Sec. 1, Ch. 76, L. 1919;  
re-en. Sec. 2540, R. C. M. 1921; amd. Sec.  
11, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**69-903. (2542) Repealed.**

**Repeal**

This section (Sec. 3, Ch. 76, L. 1919), relating to the qualifications, salary, and

traveling expenses of the state epidemiologist, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

**CHAPTER 11—VENEREAL DISEASE CONTROL**

Section 69-1101. Venereal diseases—authority of state board of health to cooperate with federal authorities in suppression.

69-1102. Acceptance and disbursement of federal moneys for control of venereal disease.

**69-1101. (2562) Venereal diseases—authority of state board of health to cooperate with federal authorities in suppression.** For the purpose of prevention, control and treatment of venereal diseases, the state board of health shall have authority to cooperate in the state of Montana with the federal public health service created by acts of Congress of the United States, including section 246 under chapter 6A, title 42, United States Code, Annotated, and acts hereafter amendatory thereof and supplemental thereto, and acts of the Congress of the United States appropriating money for such activities, as such appropriations are, from time to time, made by the Congress. The state board of health shall, itself, irrespective of appropriations, if any, made by the Congress to the state for the prevention, control and treatment of venereal diseases, undertake to prevent, control and prescribe treatments for such diseases in such ways and by such means, including education campaigns, as may be practicable, and within the limits of funds supplied for such purposes by the legislative assembly. In carrying out and discharging the duties hereby assigned to it in the field of venereal disease, the board may appoint such personnel, to serve subject to its orders and directives, as may be reasonably necessary to realize the objectives in the field, and as may be compensated within the limits of appropriations made by the legislative assembly, or by the Congress.

**History:** En. Sec. 1, Ch. 86, L. 1919;  
re-en. Sec. 2562, R. C. M. 1921; amd. Sec.  
12, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment completely re-wrote this section. For section prior to amendment see parent volume.

**69-1102. (2563) Acceptance and disbursement of federal moneys for control of venereal disease.** The state treasurer is hereby authorized to accept, under the conditions of said acts of Congress, and other acts applicable to the subject matter, and to disburse, under the direction and control of the state board of health in compliance with such acts, all moneys received by or allocated to the state of Montana, under said acts of Congress, or otherwise allotted and paid to the state of Montana by the gov-

ernment of the United States for the prevention, control and treatment of venereal diseases.

**History:** En. Sec. 2, Ch. 86, L. 1919; re-en. Sec. 2563, R. C. M. 1921; amd. Sec. 13, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment inserted the words "and other acts applicable to the subject matter"; inserted the words "and control"

after the words "under the direction"; inserted the words "in compliance with such acts"; inserted the words "or allocated to"; substituted "government of the United States" for "federal government" and deleted from the end of the section, the words "and all moneys appropriated under this act."

CHAPTER 13—PUBLIC AND OTHER WATER SUPPLIES—CONTROL BY STATE BOARD OF HEALTH

- Section 69-1326. Short title.  
 69-1327. Statement of policy.  
 69-1328. Definitions.  
 69-1329. Administration.  
 69-1330. Powers and duties of the council.  
 69-1331. Powers and duties of the board.  
 69-1332. Pollution unlawful—permits.  
 69-1333. Inspection and entry.  
 69-1334. Classifications and standards.  
 69-1335. Hearings and review.  
 69-1336. Penalties.  
 69-1337. Compliance.  
 69-1338. Injunction.  
 69-1339. State officers to cooperate with the state water pollution council.  
 69-1340. Repeal.  
 69-1341. Preservation of rights.

**69-1321 to 69-1325. Repealed.**

**Repeal**

These sections (Secs. 1 to 5, Ch. 184, L. 1949), relating to the water pollution control act, were repealed by Sec. 15, Ch.

142, Laws 1955 (69-1340). A new water pollution act is compiled as secs. 69-1326 to 69-1341.

**69-1326. Short title.** This act shall be known as the Water Pollution Act of the state of Montana.

**History:** En. Sec. 1, Ch. 142, L. 1955.

**Title of Act**

An act to create a state water pollution council, to control, prevent and abate pollution of the surface and underground

waters of the state of Montana, and repealing chapter 184 of the thirty-first legislative assembly, and repealing all acts or parts of acts in conflict herewith and for other purposes.

**69-1327. Statement of policy.** (a) Whereas a comprehensive program of water resource development for municipal and industrial water supply, irrigation, fish and wildlife conservation, and recreation is now in progress in this state, and, whereas pollution of the waters of this state may constitute a menace to public health and welfare, and may adversely affect livestock, wildlife, fish and aquatic life, and may progressively obstruct agricultural, industrial, recreational and other legitimate uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality and potability thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for agricultural, industrial, recreational and other legitimate beneficial

uses, to provide a comprehensive program in the public interest for the prevention, abatement and control of new or existing water pollution, to provide effective means for the carrying out and enforcement of such program, and to provide for cooperation with agencies of other states and the federal government in carrying out these objectives.

(b) It is not the intention of this act that wastes shall be treated to a purer condition than the natural condition of the receiving stream, provided that any municipal or industrial pollution upstream be not considered as natural.

(c) It is hereby declared to be the intention of this act to effectuate the control of pollution as herein defined only.

**History:** En. Sec. 2, Ch. 142, L. 1955.

**69-1328. Definitions.** For the purpose of this act, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Sewage" means the water-carried waste products from the residences, public buildings, institutions or other buildings, including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present. The provisions of this act shall not apply to the excrementitious discharges of domestic and farm animals providing human health is not involved.

(b) "Industrial waste" means any liquid, gaseous or solid waste substances resulting from any process of industry, manufacturing, trade or business or from the development of any natural resource, together with such sewage as may be present, which may pollute the waters of the state.

(c) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals and all other substances which may pollute the waters of the state.

(d) "Contamination" means an impairment of the qualities of the waters of the state by sewage or industrial wastes to a degree which creates a hazard to human health.

(e) "Pollution" as used in this act shall mean the alteration of the physical, chemical or biological properties of any waters of the state which renders said waters harmful or detrimental for their most beneficial uses and over which the authority of the state board of health as vested by Title 69, Chapter 13 of the Revised Codes of Montana, 1947, as herein amended, does not extend, except that no waters not now being used for human consumption as a single public supply system serving more than one hundred (100) persons shall be classified other than for industrial waste use where the same have been primarily and continuously devoted to industrial waste use except for seasonal variations for a period of over thirty (30) years. Provided, however, that new industry or sewerage system discharging industrial or other wastes into waters excepted by paragraphs (e) and (i) from the provisions of this act shall be required to maintain the classification established by the council at the point of discharge and downstream on such waters. Where waters have been classified or standards established pursuant to this act, any discharge which is not in accord with such classification or standards shall be deemed to be pollution.



Where waters have been classified or standards established pursuant to this act, any discharge which is not in accord with such classification or standards shall be deemed to be pollution.

(f) "Sewerage system" means pipe lines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for collecting or conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

(g) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works not specifically mentioned herein, installed for the purpose of treating, stabilizing or holding sewage, industrial waste, or other wastes.

(h) "Disposal system" means a system for disposing of sewage, industrial waste or other wastes, and includes sewerage systems and treatment works.

(i) "Waters of the state" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways drainage systems and other bodies of water, surface and underground, natural or artificial, publicly or privately owned. Provided, however, that unless drainage or seepage from artificial, privately owned bodies of water reaches flowing streams of the state in such condition as to pollute such flowing waters, the provisions of this act shall not apply to artificial, privately owned waters; and provided further, the provisions of this act shall not apply to any waters of the state not reasonably suitable for domestic or public water supply for human consumption at the time of the passage of this act.

(j) "Person" means the state or any instrumentality thereof, any municipality, political subdivision, institution, public or private corporation, partnership, individual, or other entity.

**History:** En. Sec. 3, Ch. 142, L. 1955;  
amd. Sec. 1, Ch. 151, L. 1959.

#### **Amendment**

The 1959 amendment inserted the proviso now appearing as the second sentence of subd. (e).

#### **Repealing Clause**

Section 2 of Ch. 151, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 151, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

**69-1329. Administration.** (a) The state board of health, hereinafter referred to as "the board" shall under the supervision of the council as hereinafter described, have the responsibility for the administration of this act. Subject to the general supervision of said council, the executive officer of the board shall administer the provisions of the act in accordance with said council's rules, regulations, orders, standards of water quality and classifications of the waters of the state. The executive officer of the board may delegate to any employee of the board such of his functions and duties as he deems necessary for the proper and efficient administration of this act, except as provided in (b) below.

(b) There is hereby created a state water pollution council, hereinafter referred to as the "council." The council shall consist of seven (7) members as follows:

The executive officer of the state board of health; the state fish and game warden (director, state fish and game department); the state engineer; and four (4) members to be appointed by the governor as follows: A representative of industry concerned with the disposal of inorganic waste within the state, for an initial term of one (1) year, thereafter for a term of four (4) years; a representative of industry concerned with the disposal of organic waste within the state for an initial term of two (2) years, thereafter for a term of four (4) years; a representative of agriculture within the state for an initial term of three (3) years, thereafter for a term of four (4) years; a representative of municipal government within the state for a term of four (4) years. The chairman shall be elected from among their number.

No additional compensation shall be allowed any members of the council for services rendered who are employed by the state government. The four (4) members appointed by the governor to serve on the council shall each be paid in addition to actual travel expenses, ten dollars (\$10.00) per day for each day of actual services in the performance of their duties, and all members of the council shall be reimbursed for travel and other necessary expenses incurred in their official duties as members of the council. All expenses of members who are otherwise in the employ of the state government shall be paid from the appropriation to their respective agencies. The expenses and per diem of the members who are appointed by the governor shall be paid from funds available to the state board of health.

The council shall hold at least two (2) regular meetings each calendar year and shall keep a record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request signed by two (2) or more members of the council. Written notice of the time and place for all meetings shall be mailed in advance to the office of each member of the council and the secretary. A majority of the members of the council shall constitute a quorum.

Each member of the council may, by order filed with the secretary of the council, designate a deputy or alternate to perform the duties of the member making the designation. Such persons, if any, designated pursuant to this action, shall have the powers and be subject to the duties and responsibilities of the member designating him.

(c) The secretary of the council shall be a member of the public health engineering staff of the state board of health, designated by the executive officer of the board. The secretary shall keep all records of meetings of and actions taken by the council. He shall keep the council advised as to actions taken by persons in response to recommendations and orders issued under authority of this act and shall perform other duties as determined upon by the council, not inconsistent with rules, regulations, and policies adopted by authority of this act or specific authority otherwise given the council.

History: En. Sec. 4, Ch. 142, L. 1955.

69-1330. Powers and duties of the council. The council is herewith authorized and directed:

(a) To study, investigate, or cause to be studied and investigated, and from time to time, determine ways and means of eliminating from the streams and waters of the state, so far as practical, all substances and materials which pollute the same, and to determine methods, so far as practical, of preventing pollution that is detrimental to the public health or the health of animals, fish, or aquatic life, or the industrial development of the state, or detrimental to the practical use of waters for recreational purposes, agricultural or industrial purposes, or obnoxious, nauseous or toxic for domestic purposes;

(b) To devise, formulate and adopt rules, regulations and methods of procedure for transmittal to the board for their guidance in the administration of this act;

(c) To develop and adopt a comprehensive program for the prevention, control and abatement of pollution of the waters of the state and from time to time review and modify such program for the guidance of the board;

(d) To recommend and encourage studies, investigations, research, demonstrations relating to water pollution and causes, prevention, control and abatement thereof as are deemed advisable and necessary and to direct the board regarding any actions deemed necessary from the results of such studies, investigations, research and demonstrations in order that the board may discharge its functions under this act;

(e) To formulate the standards of water purity and classification of water according to the most beneficial uses of such water; in formulating such standards and classifications consideration shall be given to the economics of waste treatment and prevention;

(f) To hold hearings necessary for the proper administration of this act; and to receive complaints and make investigations in relation thereto;

(g) To exercise all incidental powers necessary to carry out the purposes of this act;

(h) To utilize, in carrying out its duties, such staff services of the board as the board is able to make available within its budgetary limits.

**History:** En. Sec. 5, Ch. 142, L. 1955.

**69-1331. Powers and duties of the board.** The board shall have and may exercise the following powers and duties:

(a) To consider actions of this council as set forth in section 5 [69-1330], providing that the board may modify such actions of the council only insofar as is necessary to protect human health;

(b) To accept and administer loans and grants from the federal government and from any other source for carrying out any of its functions;

(c) To issue, modify or revoke orders for the abatement of pollution or to require the adoption of such remedial measure, including the construction of new disposal systems or treatment works or the modifications, extension or alteration of existing systems and works, as it shall be directed by the council;

(d) To examine and approve or disapprove all plants and specifications for the construction and operation of (1) new sewerage systems, disposal systems and treatment works, (2) extensions, modifications of or additions



to new or existing sewerage systems, disposal systems or treatment works, (3) extension and modifications of or additions to factories, manufacturing establishments or business enterprises, the operation of which would cause a substantial increase in waste discharges or otherwise substantially alter the physical, chemical or biological properties of the waters of the state and (4) new outlets for the discharge of sewage, industrial wastes or other wastes into any sewerage system or otherwise into the water of the state subject to the rules and regulations of the council;

(e) To issue, continue in effect, revoke, modify or deny permits to any person for the collection and discharge of sewage and industrial and other wastes under such conditions as the council may prescribe to achieve the purposes of this act;

(f) To advise, consult and cooperate with other agencies of the state and other states and federal government and with affected groups, political subdivisions and industries, in the formulation of such comprehensive program;

(g) To collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

(h) To conduct as it deems necessary, studies, investigations, research and demonstrations relating to water pollution and the causes, prevention, control and abatement thereof.

**History:** En. Sec. 6, Ch. 142, L. 1955.

**69-1332. Pollution unlawful—permits.** (a) It shall be unlawful for any person to cause the pollution, as defined in section 3, subsection (e) [69-1328(e)] of this act, of any waters of the state.

(b) It shall be unlawful for any person to construct, install or operate a new sewerage system, disposal system or treatment works, extensions, modifications, or additions to new and existing sewerage systems, disposal systems, or treatment works, extensions, modifications or additions to factories, manufacturing establishments or business enterprises, the operation of which would cause a substantial increase in waste discharges to the waters of the state, or otherwise substantially alter the physical, chemical or biological properties of the waters of the state to make or cause to be made any new outlet for the discharge of sewerage, industrial waste or other wastes into any sewerage system or into the waters of this state without first securing such a permit as the board may by regulations require. The board may require the submission of plans and specifications for approval or disapproval and such other information as it deems relevant in connection with the issuance of such permits.

**History:** En. Sec. 7, Ch. 142, L. 1955.

**69-1333. Inspection and entry.** The board, through its duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to pollution of any waters of the state.

**History:** En. Sec. 8, Ch. 142, L. 1955.

**69-1334. Classifications and standards.** (a) In order to effectuate a comprehensive program for the prevention, abatement and control of pollu-

tion in the waters of the state, the council is authorized to group such waters into classes in accordance with their present and future most beneficial uses in the interest of the public and such classification or standards may from time to time be altered or modified. Standards of quality and purity for each such classification of the waters of the state shall be adopted in relation to the most beneficial use and benefit to which the waters are or may in the future be put. Such standards may from time to time be altered or modified.

Before streams are classified or standards established or before such standards are modified or repealed, public hearings by the council shall be held in connection therewith. Notice of public hearing for the consideration, adoption or amendment of the classification of waters and the standards of purity and quality thereof shall specify the water concerning which a classification is sought to be made or for which standards are sought to be adopted and the time, date and place of such hearing. Such notice is to be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation in the area affected and in addition shall be mailed to such other persons as the council has reason to believe may be affected by such classifications and the settings of such standards.

**History:** En. Sec. 9, Ch. 142, L. 1955.

**69-1335. Hearings and review.** (a) Any order issued by the council or board shall become final upon thirty (30) days after notice thereof is given to the person affected by such order unless within such thirty (30) day period such person files a notice of application for rehearing with the council. If such notice is filed the council shall accord the appellant a rehearing. A record or summary of the proceedings of such rehearing shall be filed with the council, together with findings of fact made by the council. In any such rehearing, a representative of the council is authorized to administer oaths, examine witnesses and issue notices of hearings and subpoenas requiring the testimony of witnesses and the production of evidence relevant to matter involved in the rehearing. Witnesses shall receive the same fees and mileage as in civil actions. In case of failure to obey a notice of hearing or subpoena issued under this section the district court for the county where the hearing is held shall have jurisdiction upon application of the council or its representatives to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by the district court as contempt thereof.

The council shall affirm, modify or reverse such order and notify the appellant of its action. The action of the council shall become final thirty (30) days after notice of such action is served upon the appellant by registered mail or unless within such time an appeal is taken to the district court as herein provided.

An appeal may be taken from any decision of the council by any person who is or may be adversely affected thereby to the district court of any county wherein any part of such alleged pollution originates or where any other matter or controversy may arise. Within thirty (30) days after receipt of a copy of the order of the council made on rehearing or after service of notice thereof by registered mail, the appellant or his attorney

shall serve a notice of appeal on the council through its secretary, provided that during such thirty (30) day period the court may for good cause shown extend the time for notice of appeal for not exceeding an additional sixty (60) days. The notice of appeal shall refer to the action appealed from and shall specify the ground of appeal. The original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within ten (10) days of the service of the notice and thereupon the court shall have jurisdiction of the appeal.

The appellant and the council shall in all cases be deemed the original parties to an appeal. Any person affected may become a party by intervention as in a civil action upon showing cause therefor. The attorney general shall represent the council if requested by the council on all such appeals on behalf of the state, or the council is empowered at its discretion to appoint special counsel for such proceeding. No bond or deposit for cost shall be required of the state or council upon any such appeal or upon any subsequent appeal to the supreme court or other court proceedings, pertaining to the matter.

The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the council regularly pursued its authority, or whether or not the orders of the board and the findings of the council ought to be sustained, or whether or not such orders and findings are reasonable under all of the circumstances of the case.

An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner as is provided in civil cases. Upon the final determination of such judicial proceedings, the council shall enter an order in accordance with such determination.

**History:** En. Sec. 10, Ch. 142, L. 1955.

**69-1336. Penalties.** Any person who violates any final determination or order of the board or of the council shall be enjoined from continuing such violation.

**History:** En. Sec. 11, Ch. 142, L. 1955.

**69-1337. Compliance.** Within thirty (30) days after the date on which order of the board or of the council becomes final or after the date judgment affirming such an order is entered, the person or persons as defined herein upon whom the order has been served shall initiate such steps as may be necessary to comply with it. Provided, however, upon good cause shown the board or the council shall extend said thirty (30) day period for a reasonable period of time.

**History:** En. Sec. 12, Ch. 142, L. 1955.

**69-1338. Injunction.** It shall be the duty of the council to bring action for an injunction against any person or persons violating any final order of the board or of the council.

**History:** En. Sec. 13, Ch. 142, L. 1955.

**69-1339. State officers to cooperate with the state water pollution council.** The council is hereby authorized to require the assistance, cooperation and services of and the use of the records and files in all the departments and institutions of the state, and all state officers and the



governing authorities of all state institutions are hereby directed to cooperate with the council in furthering the purposes of this act.

History: En. Sec. 14, Ch. 142, L. 1955.

**69-1340. Repeal.** All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed. The provisions of this act are, however, not to be construed to impair or lessen in any manner the existing powers and duties of the state board of health, except that chapter 184 of the thirty-first legislative assembly is hereby repealed.

History: En. Sec. 15, Ch. 142, L. 1955.

**69-1341. Preservation of rights.** It is the purpose of this act to provide additional and cumulative remedies to prevent, abate and control the pollution of the waters of the state. Nothing herein contained shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this act or any act done by virtue thereof, be construed as estopping the state, or any municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

History: En. Sec. 16, Ch. 142, L. 1955.

#### Separability Clause

Section 17 of Ch. 142, Laws 1955 read  
"Severability. If any section, subsection,

sentence, clause, phrase or words of this act is for any reason held to be unconstitutional, such decrees shall not affect the validity of any remaining portions of this act."

### CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

\*Section 69-1512. Fees for inspection or examination.

69-1516. Certificates must be renewed yearly—disposition of moneys.

**69-1512. (2723) Fees for inspection or examination.** (1) At the time of inspection, the inspector of boilers shall collect fees for the inspection in accordance with the following schedule:

- |   |         |
|---|---------|
| (a) Boilers with pressure under thirty (30) pounds per square inch                                    | \$5.00  |
| (b) Boilers with pressure from thirty (30) pounds to one hundred (100) pounds per square inch         | \$7.50  |
| (c) Boilers with pressure from one hundred (100) pounds to three hundred (300) pounds per square inch | \$10.00 |
| (d) Boilers with pressure over three hundred (300) pounds per square inch                             | \$15.00 |
| (e) Miniature boilers with pressure not in excess of sixty-five (65) pounds per square inch           | \$5.00  |

In case of the failure of the owner, manager or person in charge of any boiler to pay such fee upon the demand of the inspector, said inspector is authorized to seal the firebox of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager. Any person who tampers with or removes such seal without such written order shall be deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2) Whenever, upon request of the owner or operator of any boiler it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law, in addition to the fees herein prescribed, shall be charged and collected by the inspector at the time such special inspection is made.

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule.

(a) First class	\$15.00
(b) Second class	\$10.00
(c) Third class	\$ 6.00
(d) Low pressure	\$ 4.00
(e) Traction	\$ 6.00
(f) Renewal of license	\$ 2.00
(g) Replacement of lost certificate	\$ 1.00

In case of the failure of any applicant to pass a successful examination, ninety days must elapse before he can again be examined for license. But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room.

**History:** En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1959.

#### Amendment

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

**69-1516. (2727) Certificates must be renewed yearly—disposition of moneys.** All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. The fee for renewal is two dollars in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license of the same grade, before license can be reissued; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have sixty days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee of one dollar.

All moneys collected by virtue of the provisions of this act must be paid into the state treasury once in each month and credited to the industrial administration fund.

**History:** En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959.

inspection fees of the industrial accident board are now paid and credited."

#### Amendment

The 1959 amendment increased the fee for renewal of license from \$1.00 to \$2.00; substituted "act" for "article" in the second paragraph and substituted "industrial administration fund" for "industrial accident board administrative fund as other

#### Repealing Clause

Section 3 of Ch. 54, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 4 of Ch. 54, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 26, 1959.

# CHAPTER 18—PUBLIC SAFETY IN CASE OF FIRE—FIRE ESCAPES AND APPARATUS—INSPECTIONS

Section 69 807. Fire extinguisher requirements.

**69-180 . Fire extinguisher requirements.** All buildings within the scope of this act shall keep on each floor one or more fire extinguishers of a capacity of not less than two and a half ( $2\frac{1}{2}$ ) gallons in good working order; provided, that in lieu of said fire extinguishers such buildings may be equipped on each floor with a hose one and one-half inches ( $1\frac{1}{2}$ ) in diameter in good condition with nozzle attached connected to standpipe with suitable water supply. Such hose shall be of sufficient length to reach all parts of the floor on which it is situated.

Provided, further, that no fire extinguisher or extinguishers containing any of the following liquids: Carbon tetrachloride ( $CCl_4$ ); Chlorobromomethane ( $CH_2BrCl$ ); Azeotropic chlormethane ( $CM-7$ ); Bromochlorodifluoromethane ( $CBrClF_2$ ); Dibromodifluoromethane ( $CBr_2F_2$ ); 1, 2-Dibromo-2-chloro-1, 1, 2-trifluoroethane ( $CBrF_2CBrClf$ ); 1, 2-Dibromo-2, 2-difluoroethane ( $CH_2BrCBrF_2$ ); Methyl bromide ( $CH_3Br$ ); Ethylene dibromide ( $CH_2BrCH_2Br$ ); 1, 2-Dibromotetrafluoroethane ( $CBrF_2CBrF_2$ ); Hydrogen bromide ( $HBr$ ); Methylene bromide ( $CH_2Br_2$ ); Bromodifluoromethane ( $CHBrF_2$ ); Bromotrifluoromethane ( $CBrF_3$ ); and Dichlorodifluoromethane ( $CCl_2F_2$ ), or any other toxic or poisonous vaporizing liquid, shall be kept or maintained in or upon any such building; ninety days (90) after written notice by the state fire marshal or his deputy.

**History:** En. Sec. 7, Ch. 279, L. 1947;  
amd. Sec. 1, Ch. 227, L. 1959.

## Repealing Clause

Section 2 of Ch. 227, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## Amendment

The 1959 amendment added the second paragraph to this section.

# CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE AND SALE

**69-1913. (2798) Repealed.**

## Repeal

This section (Sec. 13, Ch. 129, L. 1917), relating to vehicles transporting ex-

plosives, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955. See sec. 32-21-153 for new regulations.

**69-1915. (2800) Repealed.**

## Repeal

This section (Sec. 15, Ch. 129, L. 1917), providing a penalty for violations of the

act, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

**69-1925. (2810) Magazines, etc., to bear warning signs.**

## Cross-Reference

Regulating transportation of explosives by highway vehicles, sec. 32-21-153.

# CHAPTER 24—HOMES FOR THE AGED—INSPECTION

Section 69-2401. Definitions.

**69-2401. Definitions.** (a) A "boarding home" or "nursing home" for aged persons is hereby defined to be a home where two or more aged persons are residing and boarding or receiving nursing care, operated by



any person for compensation or hire, whether such aged persons are receiving public assistance from the state of Montana or any county therein, or are supported in whole or in part by their own or other private funds or resources.

(b) The "operator" of a boarding home or nursing home is defined to be any person, partnership, voluntary association or corporation who conducts or operates a home for the care, nursing care, maintenance, board and room of two or more aged persons unrelated to him by blood or marriage for compensation and hire.

(c) The term "secretary and/or executive officer," shall mean the secretary and/or executive officer of the state board of health of Montana.

(d) Any person or persons caring for individuals related by blood or marriage shall be exempt from the requirement of licensing and inspection unless operating a commercial nursing home or boarding home.

**History:** En. Sec. 1, Ch. 192, L. 1947; by blood or marriage," and added subd. amd. Sec. 1, Ch. 243, L. 1959. (d).

#### **Amendment**

The 1959 amendment in subds. (a) and (b) substituted "two" for "five"; in subd. (b) inserted the words "unrelated to him

#### **Repealing Clause**

Section 2 of Ch. 243, Laws 1959 repealed all acts or parts of acts in conflict therewith.

### **CHAPTER 27—FIREWORKS REGULATION**

- Section 69-2701. Fireworks prohibited and defined for the purposes of this act.  
 69-2702. Supervised public display of fireworks.  
 69-2704. Where act does not apply.  
 69-2706. Penalties.

#### **69-2701. Fireworks prohibited and defined for the purposes of this act.**

a. It shall be unlawful to sell, transport or use any fireworks within the state of Montana except as hereinafter provided.

b. The term "fireworks" shall mean and include any combustible, or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include sky rockets, Roman candles, Daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, fire-crackers, torpedoes, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance. Nothing in this law shall be construed as applying to toy paper caps containing not more than twenty-five hundredths of a grain of explosive composition per cap, and to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or navy forces of the United States or of this state, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

c. It shall be lawful for any individual, firm, partnership, corporation or association to possess for sale within the state, sell or offer for sale, at retail, or use, within the state of Montana, the permissible fireworks herewith enumerated.

Permissible fireworks shall include dangerous articles and, more specifically, shall include and be limited to the following, but specifically excluding sky rockets, Roman candles and Daygo bombs:

(1) Helicopter type spinners, total pyrotechnic composition not to exceed twenty grams each in weight;

(2) Cylindrical fountains, total pyrotechnic composition not to exceed twenty-five grams each in weight. The inside tube diameter shall not exceed  $\frac{3}{4}$  inch;

(3) Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight;

(4) Wheels, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over  $\frac{1}{2}$  inch;

(5) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight;

(6) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five grams;

(7) Firecrackers with soft casings, the external dimensions of which do not exceed one and one-half inches in length or one-quarter inch in diameter, total pyrotechnic composition not to exceed two grains each in weight;

(8) Whistles without report, total pyrotechnic composition not to exceed forty grams each in weight;

d. No person, firm or corporation shall offer fireworks of any kind as defined herein for sale at retail before the 24th day of June and after the 5th day of July.

e. It shall be unlawful for any individual, firm, partnership or corporation to discharge or cause to be discharged any pyrotechnics of any description whatever within the exterior boundaries of any state forest, or state park, or state recreation area.

**History:** En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959.

#### Amendments

The 1957 amendment substituted the words "as known and defined under the interstate commerce commission regulations for the transportation of explosives and other dangerous articles as class B fireworks, requiring a red label for shipment of the same in interstate commerce and specifically including sky rockets" for the words "and shall include blank cartidges, toy cannons, in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers exceeding two (2) inches in length, and one-quarter ( $\frac{1}{4}$ ) inch in diameter, torpedoes, skyrockets, Roman candles, Daygo bombs, sparklers or other

fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance" and deleted the Exceptions paragraph, for text of which see parent volume.

The 1959 amendment completely rewrote and enlarged this section. A portion of the section prior to amendment is now contained in subd. (b) down through the words "deflagration or detonation"; while the remainder of the section as it was prior to amendment was deleted. The deleted portion read as follows: "as known and defined under the interstate commerce commission regulations for the transportation of explosives and other dangerous articles as class B fireworks, requiring a red label for shipment of the same in interstate commerce and specifically including sky rockets."

**Repealing Clause**

Section 2 of Ch. 136, Laws 1957 repealed

all acts and parts of acts in conflict therewith.

**69-2702. Supervised public display of fireworks.** Except as herein-after provided, it shall be unlawful for any person, firm, co-partnership, association or corporation to possess, offer for sale, expose for sale, sell, or use or explode any fireworks; provided that the state fire marshal and the governing body of any city, town or township or county shall have power, under reasonable rules and regulations adopted by it, to grant permits for supervised public displays of fireworks to be held therein by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. Every such display shall be handled by a competent operator to be approved by the state fire marshal or by the governing body of the municipality in which the display is to be held and shall be of such a character, and so located, discharged or fired as in the opinion of the chief of the fire department or such other officer as may be designated by the governing body of the municipality, after proper inspection, shall not be hazardous to property or endanger any person or persons. Application for permits shall be made in writing at least fifteen (15) days in advance of the date of the display. After such privilege shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. The term "municipalities" shall include cities, incorporated towns or townships.

**History:** En. Sec. 3, Ch. 143, L. 1947;  
amd. Sec. 2, Ch. 273, L. 1959.

**Amendment**

The 1959 amendment in the first sentence inserted the word "possess" and deleted the words "at retail" which appeared between the words "sell" and "or use."

**69-2704. Where act does not apply.** Nothing in this act shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit from any municipality at the display covered by such permits; or the use of fireworks by railroads or other transportation agencies for signal purposes or illumination, or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations, or organizations composed of veterans of the United States army, navy, or marine corps.

**History:** En. Sec. 5, Ch. 143, L. 1947;  
amd. Sec. 3, Ch. 273, L. 1959.

**Amendment**

The 1959 amendment substituted the words "the sale of any kind of fireworks to" for the words "any resident whole-

saler, dealer, or jobber to sell at whole-sale such fireworks as are not herein prohibited, or the sale of any kind of fireworks, provided the same are to be shipped directly out of state, or are to be used by."

**69-2706. Penalties.** Any person, firm, co-partnership, association or corporation violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); or in the case of individuals, the members of a partnership and the responsible officers and agents of an association or corporation, by



imprisonment in the county jail for a period not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

**History:** En. Sec. 7, Ch. 143, L. 1947;  
amd. Sec. 4, Ch. 273, L. 1959.

#### **Amendment**

The 1959 amendment substituted the present penalty provisions for provisions providing a fine of not exceeding \$100 while the imprisonment penalty was for not exceeding 90 days.

#### **Repealing Clause**

Section 5 of Ch. 273, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 6 of Ch. 273, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 17, 1959.

### **CHAPTER 28—REFRIGERATED LOCKERS—REGULATION OF**

- Section 69-2802. Definitions.  
69-2803. License required.  
69-2804. Fee—term of license.  
69-2805. Cancellation or suspension of license—procedure.  
69-2807. Rules and regulations—cooperative agreements.  
69-2808. Inspections.  
69-2810. Authority of board to issue subpoenas.  
69-2813. Lien of operator for charges—requirements on receipt of game, veal and beef.

**69-2802. Definitions.** Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(a) "Refrigerated locker" or "locker" means any place, premises or establishment where facilities for the cold storage and preservation of human food in separate and individual compartments are offered to the public upon a rental or other basis providing compensation to the person offering such services.

(b) "Frozen food processing plant" means a location or establishment in which freezing facilities are used to freeze meat or meat products, fruits, vegetables, or any other foods for delivery to and frozen storage by the ultimate consumer and which has one (1) or more of the following facilities: a slaughterhouse; a chill room; facilities for cutting, blanching, preparing, wrapping and packaging meat and meat products, fruits, vegetables, or any other food; a refrigerated holding room for storing frozen meat or meat products, fruits, vegetables, or any other food prior to delivery to the ultimate consumer; and shall include all attached or detached buildings, rooms, open or enclosed spaces under the control of the operator and used in any capacity in connection with the operation of the plant; providing that when this subsection is applicable to any meat market paying a fee and licensed by the state board of health under other provisions of law said meat market shall be exempt from the payment of the license fee under section 69-2804, Revised Codes of Montana, 1947, but shall otherwise comply with provisions of this act and the rules and regulations promulgated thereunder.

(c) "Person" includes any individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaging in the business of operating or owning or offering the services of refrigerated lockers or frozen food processing plants as above-defined.

(d) The term "board" means the state board of health of the state of Montana.

**History:** En. Sec. 2, Ch. 220, L. 1947; amd. Sec. 14, Ch. 264, L. 1955; amd. Sec. 1, Ch. 149, L. 1959.

#### Amendments

The 1955 amendment substituted a subdivision (c) [now (d)] for one which read: "The term 'director' means the director

of the food and drugs division of the state board of health of Montana."

The 1959 amendment inserted present subd. (b), redesignated former subds. (b) and (c) as (c) and (d), respectively, and inserted the words "or frozen food processing plants" near the end of present subd. (c).

**69-2803. License required.** No person hereafter shall engage within this state in the business of owning, operating or offering the services of any refrigerated locker or lockers or any frozen food processing plant or plants without having obtained from the board a license for each such place of business. Application for such license shall be made in writing and under oath to the board, on such forms and with such pertinent information as it may deem necessary. Such licenses shall be granted as a matter of right, unless conditions exist which are grounds for a cancellation or revocation of a license as hereinafter set forth, and subject to the right of applicant for license to hearing and judicial review as hereinafter set forth.

**History:** En. Sec. 3, Ch. 220, L. 1947; amd. Sec. 15, Ch. 264, L. 1955; amd. Sec. 2, Ch. 149, L. 1959.

#### Amendments

The 1955 amendment substituted "board" for "director" each time it ap-

pears and added the words "and subject to the right of applicant for license to hearing and judicial review as hereinafter set forth" at the end of the section.

The 1959 amendment inserted the words "or any frozen food processing plant or plants" in the first sentence.

**69-2804. Fee—term of license.** (a) There shall be paid to the board with each application for such license or for renewal of such license an annual license fee of ten dollars (\$10.00).

(b) Each such license shall expire on December 31st following its date of issue, unless sooner revoked for cause. Renewal may be obtained annually by paying the required annual license fee. Such license fee shall not be transferable to any person nor be applicable to any location other than that for which originally issued. Application made after July 1st of each year shall be entitled to such license for the remainder of the year on payment of a fee of five dollars (\$5.00).

**History:** En. Sec. 4, Ch. 220, L. 1947; amd. Sec. 16, Ch. 264, L. 1955; amd. Sec. 3, Ch. 149, L. 1959.

#### Amendments

The 1955 amendment substituted the word "board" for "director" in subd. (a).

The 1959 amendment substituted the words "such license" the first time they

appear in subd. (a) for "a refrigerated locker license."

#### Repealing Clause

Section 4 of Ch. 149, Laws 1959 read "That section 69-2814 of the Revised Codes of Montana, 1947, and all other acts and parts of acts in conflict herewith be, and the same are hereby repealed."

**69-2805. Cancellation or suspension of license—procedure.** (a) The board may cancel or suspend any such license if it finds after proper investigation that (1) the licensee has violated any provisions of this act or of any other law of this state relating to the operation of refrigerated lockers or of the sale of any human food in connection therewith, or any regulation effective under any act the administration of which is in the charge of the state board of health of Montana, or (2) the licensed re-

frigerated locker premises or any equipment used therein or in connection therewith is in an unsanitary condition and the licensee has failed or refused to remedy the same within ten (10) days after receipt from the board of written notice to do so.

(b) No license shall be denied, revoked or suspended by the board without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at public hearing such charge within ten (10) days from the date of such notice.

(c) Any order made by the board suspending or revoking any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date notice in writing of the board's order revoking or suspending such license has been served upon him.

(d) It shall be the duty of each county attorney to whom any violation of this act is reported to cause appropriate proceedings to be instituted and prosecuted in the district court in the county without delay, provided, however, that nothing in this act shall be construed as requiring the board to report for prosecution minor violations of the act whenever it believes that the public interest will best be served by a suitable notice of warning in writing.

History: En. Sec. 5, Ch. 220, L. 1947;  
amd. Sec. 17, Ch. 264, L. 1955.

#### Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

**69-2807. Rules and regulations—cooperative agreements.** (a) The board is hereby empowered to prescribe and to enforce such rules and regulations and to make such definitions, and to prescribe such procedure with regard to hearings, as it may deem necessary to carry into effect the full intent and meaning of this act.

(b) The board is hereby authorized to enter into cooperative agreements with any of the state agencies or political subdivisions and it may delegate authority to these state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

History: En. Sec. 7, Ch. 220, L. 1947;  
amd. Sec. 18, Ch. 264, L. 1955.

#### Amendment

The 1955 amendment substituted "board" for "director" and "it" for "he" each time they appear in this section.

**69-2808. Inspections.** The board, through such of its members, officers or agents as it may authorize, shall cause to be made periodically a thorough inspection of each establishment licensed under this act to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this act and of all other laws of this state applicable to the operation either of refrigerated lockers or of the handling of human food in connection therewith, and of all regulations effective under this act relative to such operation. Such inspection shall also be made of each vehicle used by operator of refrigerated lockers or of an establishment handling human food in connection therewith, when



such vehicle is used in transporting or distributing human food products to or from refrigerated lockers within this state.

**History:** En. Sec. 8, Ch. 220, L. 1947;  
amd. Sec. 19, Ch. 264, L. 1955.

words "board, through such of its members, officers or agents as it may authorize" for "director."

**Amendment**

The 1955 amendment substituted the

**69-2810. Authority of board to issue subpoenas.** In any proceeding under this act the board may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Montana.

**History:** En. Sec. 10, Ch. 220, L. 1947;  
amd. Sec. 20, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment substituted "board" for "director."

**69-2813. Lien of operator for charges—requirements on receipt of game, veal and beef.** Every operator of a locker shall have a lien upon all the property of every kind in his possession for all lockers' rentals, processing, handling or other charges due. Such lien may be foreclosed under the procedure as provided for chattel mortgages.

Locker owners and operators shall not be responsible for liability for violations of game or other laws by renters unless the contents of the locker are under the control of the locker plant operator. Except that operator shall not receive for processing quick freeze, or cold storage any quarter, half, or whole carcass of any beef or veal or game or game birds except that such carcass or portion herein mentioned, shall be properly stamped or tagged. In the event that carcass or portion herein mentioned shall not be properly stamped or tagged, said operator shall require a declaration to be made and signed showing required authority to said carcass or portion thereof described with the detail of obtaining possession, date of placing in the locker, the weight and the type of meat, said declaration must be kept as a matter of record for one (1) year open to inspection by a duly authorized agent of the board.

**History:** En. Sec. 13, Ch. 220, L. 1947;  
amd. Sec. 21, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment substituted "board" for "director."

**69-2814. Repealed.**

**Repeal**

This section (Sec. 14, Ch. 220, L. 1947), relating to a provision that operators

were not to be construed as warehousemen, was repealed by Sec. 4, Ch. 149, Laws 1959.

## CHAPTER 30—MONTANA HOSPITAL SURVEY AND CONSTRUCTION ACT

Section 69-3002. Definitions.

69-3003. Administration—hospital survey and construction.

69-3004. General powers and duties.

69-3006. Survey and planning activities.

69-3007. Construction program.

69-3009. State plan.

69-3010. Minimum standards for hospital and medical facilities maintenance and operation.

69-3012. Construction projects—applications.

- 69-3015. Hospital and medical facilities construction fund.  
 69-3016. Consolidated applications by two or more counties.  
 69-3018. State and federal participation in hospital and medical facilities construction.

**69-3002. Definitions.** As used in this act:

- (a) "Board" means the state board of health of the state of Montana.
- (b) "The Federal Act" means Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.) as now and hereafter amended.
- (c) "The Surgeon General" means surgeon general of the public health service of the United States.
- (d) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.
- (e) "Public Health Center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.
- (f) "Nonprofit Hospital" and "Nonprofit Medical Facility" means any hospital or medical facility owned or operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.
- (g) "Director" means the principal administrative officer of the division of hospital survey and construction of the said state board of health of Montana as appointed by said board.
- (h) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act, and such other medical facilities for which federal aid may be authorized under the federal act.

**History:** En. Sec. 2, Ch. 270, L. 1947;  
 amd. Sec. 1, Ch. 215, L. 1955.

**Amendment**

The 1955 amendment in subd. (b) substituted "Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.) as

now and hereafter amended" for "Public Law 725 of the 79th Congress, approved August 13, 1946, entitled the hospital survey and construction act" reworded subd. (f) to include the definition of "nonprofit medical facility" and added subd. (h).

**69-3003. Administration—hospital survey and construction.** The state board of health of the state of Montana shall possess, exercise and carry out, in the field of hospital survey and construction, the powers, functions and duties assigned to it by law and for all such purposes the board shall constitute the sole agency of the state of Montana. Specifically, the board is hereby charged with the duties of

- (1) making an inventory of existing hospitals, and medical facilities and, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facilities construction as provided in sections 69-3006 to 69-3008, and

(2) developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in sections 69-3009 to 69-3016.

**History:** En. Sec. 3, Ch. 270, L. 1947; amd. Sec. 2, Ch. 215, L. 1955; amd. Sec. 22, Ch. 264, L. 1955.

#### Compiler's Note

This section was amended twice in the 1955 Session. Once by chapter 215, effective March 5, 1955 and once by chapter 264, effective March 10, 1955. Neither of the chapters made mention of the other amendment in the Session, but since the acts do not appear to be in irreconcilable conflict the compiler has made a composite section out of the two amendments, carrying the changes made by each amendment.

#### Amendments

The 1955 amendment by Ch. 215 inserted the words "and medical facilities" each time they appear in this section.

The 1955 amendment by Ch. 264 substituted the present first paragraph for one which read: "There is hereby established in the state board of health, a division of hospital survey and construction which shall be administered by a full-time director appointed by the board and serving under the supervision and direction of the board. The state board of health through such division, shall constitute the sole agency of the state for the purpose of."

**69-3004. General powers and duties.** In carrying out the purposes of the act, the board is authorized and directed:

(a) To require such reports, make such inspections and investigations and prescribe such regulations as it deems necessary;

(b) To provide such methods of administration, appoint a director and other personnel and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(c) To procure in its discretion the temporary or intermittent services of experts or consultants, or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) To the extent that it considers desirable to effectuate the purposes of this act, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private;

(e) To accept on behalf of the state and to deposit with the state treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this act, and to expend the same for such purpose;

(f) To make an annual report to the governor on activities and expenditures pursuant to this act, including recommendations for such additional legislation as the board considers appropriate to furnish adequate hospital and medical facilities to the people of this state.

**History:** En. Sec. 4, Ch. 270, L. 1947; amd. Sec. 3, Ch. 215, L. 1955; amd. Sec. 23, Ch. 264, L. 1955.

#### Compiler's Note

This section was amended twice in the 1955 Session. Once by chapter 215, effective March 5, 1955 and once by chapter 264, effective March 10, 1955. Neither chapter made mention of the other amendment in the Session, but since the acts do not appear to be in irreconcilable conflict, the compiler has made a com-

posite section out of the two amendments, carrying the changes made by each amendment.

#### Amendments

The 1955 amendment by Ch. 215 substituted the words "and medical facilities" for the words "clinic and similar facilities" in subd. (f).

The 1955 amendment by Ch. 264 in subd. (b) deleted the words "of the division" after the words "other personnel."

**69-3006. Survey and planning activities.** The board is authorized and directed to make an inventory of existing hospitals and medical facilities,



including public, nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facilities to all the people of the state.

**History:** En. Sec. 7, Ch. 270, L. 1947; appear in this section. In the last instance they are substituted for the words "clinic and similar services."

**Amendment**

The 1955 amendment inserted the words "and medical facilities" each time they

**69-3007. Construction program.** The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital facilities and medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facilities services reasonably accessible to all persons in the state.

**History:** En. Sec. 8, Ch. 270, L. 1947; **Amendment**

amd. Sec. 5, Ch. 215, L. 1955.

The 1955 amendment inserted the words "and medical facilities" each time they appear in this section.

**69-3009. State plan.** The board shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facilities construction program developed under sections 69-3006 to 69-3008 and which shall provide for the establishment, administration, and operation of hospital and medical facilities construction activities in accordance with the requirements of the federal act and regulations thereunder. The board shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the board shall publish a general description of the provisions thereof in three (3) successive publications at intervals of one (1) week between publications in at least one newspaper having general circulation in each county in the state, and in five (5) papers having a general circulation throughout the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The board shall from time to time review the hospital and medical facilities construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem advisable.

**History:** En. Sec. 10, Ch. 270, L. 1947; **Amendment**

amd. Sec. 6, Ch. 215, L. 1955.

The 1955 amendment inserted the words "and medical facilities" each time they appear in this section.

**69-3010. Minimum standards for hospital and medical facilities maintenance and operation.** The board shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan.

**History:** En. Sec. 11, Ch. 270, L. 1947;      **Amendment**  
amd. Sec. 7, Ch. 215, L. 1955.

The 1955 amendment inserted the words  
"and medical facilities."

**69-3012. Construction projects—applications.** Applications for hospital and medical facilities construction projects for which federal funds are requested shall be submitted to the board and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or a medical facility. Each application for a construction project shall conform to federal and state requirements.

**History:** En. Sec. 13, Ch. 270, L. 1947;      **Amendment**  
amd. Sec. 8, Ch. 215, L. 1955.

The 1955 amendment inserted the words  
"and medical facilities" and "or a medical facility."

**69-3015. Hospital and medical facilities construction fund.** The board is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants. There is hereby established, separate and apart from all public moneys and funds of this state, a hospital and medical facilities construction fund. Money received from the federal government for a construction project approved by the surgeon general shall be deposited to the credit of this fund and shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Claims for all payments from the hospital and medical facilities construction fund shall, if approved by the board, bear the signature of the executive officer (secretary) of the board, or in his absence, the director.

**History:** En. Sec. 16, Ch. 270, L. 1947;      **Amendment**  
amd. Sec. 9, Ch. 215, L. 1955.

The 1955 amendment inserted the words  
"and medical facilities" each time they  
appear in this section and began a new  
sentence with the word "Claims."

**69-3016. Consolidated applications by two or more counties.** Any two (2) or more counties of this state may, by concurrent action of their respective boards of county commissioners, join in a consolidated application for funds for construction (and operation and maintenance when permitted) under the terms of this act of a single hospital, medical facility or health center for all of the counties so joining, such hospital, medical facility or health center to be located at such point within the exterior boundaries of the joining counties as may best serve the people of all the counties involved, and any laws of this state investing any county with power to construct, maintain and operate hospitals or medical facilities directly, or by lease or contract, may be utilized for joint action by any two or more counties, provided, however, that in all cases, the provisions of all laws governing submission of questions of establishment of such a hospital or medical facility, hospital or medical facilities construction, issuance of bonds therefor, and method of operation, and

requiring majority vote of the taxpayers at elections on such questions in a county shall apply to and govern consolidated applications and concurrent and joint actions of two or more counties and a majority of the qualified voters in an election common to each county, in each one of the joining counties, shall be required to authorize the issuance of bonds, construction and contracts under such joint or consolidated plan.

**History:** En. Sec. 17, Ch. 270, L. 1947;  
amd. Sec. 10, Ch. 215, L. 1955.

#### Amendment

The 1955 amendment inserted the words "medical facility," "or medical facilities" and "or medical facility" wherever appearing in this section.

**69-3018. State and federal participation in hospital and medical facilities construction.** The state of Montana is hereby authorized and empowered to participate jointly with the federal government on a dollar for dollar basis in carrying out a program of hospital and medical facilities construction in accordance with the provisions of sections 69-3001 to 69-3017 and the provisions of the federal hospital and medical facilities survey and construction act (Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.) as now and hereafter amended), and to allocate and expend money for that purpose in cases where the appropriations of money heretofore or hereafter made by the federal government under said federal act to the state of Montana are inadequate to meet the amounts needed for hospital and medical facilities construction as such needs may be determined from time to time under this act. Provided however, that any funds remaining unused for a consecutive period of two (2) years shall revert to the general fund.

**History:** En. Sec. 1, Ch. 105, L. 1949;  
amd. Sec. 11, Ch. 215, L. 1955.

#### Amendment

The 1955 amendment inserted the words "and medical facilities" each time they appear in this section and substituted "Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.)" and "federal act" for "Public Law 725 of the Seventy-Ninth Congress, approved August 13, 1946" and "Public Law 725" respectively.

#### Separability Clause

Section 12 of Ch. 215, Laws 1955 read "Severability. If any provisions of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable."

#### Effective Date

Section 13 of Ch. 215, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

### CHAPTER 32—STATE BOARD OF HEALTH—MATERNAL AND CHILD HEALTH SERVICES—EDUCATIVE PROGRAM—SCHOOL NURSES —SUPERVISION BY BOARD—AUTHORITY OF COUNTIES AND SCHOOL BOARDS—SERVICES FOR CRIPPLED CHILDREN—EDUCATION FOR CHILDREN AND ADULTS IN USE AND ABUSE OF NARCOTICS

- Section 69-3201. Maternal and child health protection—health education program.  
69-3202. School nurses—county nurses—supervision—rules and regulations.  
69-3203. Services for crippled children.  
69-3204. Narcotic education.  
69-3205. Appointment of personnel to execute function and activities, under Chapter 32, Title 69, Revised Codes, 1947.



**69-3201. Maternal and child health protection—health education program.** The state board of health is hereby authorized and directed to continue to develop and administer a program for the better protection of the health of mothers and children in the state, pursuant to the purposes of the program inaugurated by the state of Montana by chapter 121, Laws of 1917. The board shall make and enforce sanitary and hygienic regulations designed to promote the health and well-being of mothers and children; it shall carry on continuously a campaign of health education in their interest; and it shall take all reasonable and proper measures for the effective protection of the health of mothers and children; however, nothing in this act shall be construed or operate so as to interfere in any way with the exercise of the child's or parent's religious belief, as to the examination for or in the treatment of diseases; provided, that quarantine regulations relating to contagious or infectious diseases are not infringed upon.

**History:** En. 69-3201 by Sec. 24, Ch. 264, L. 1955.

#### Compiler's Notes

Section 24 of Ch. 264, Laws 1955 contained a preliminary clause which read "Section 24. That there is hereby added an additional Chapter to and under Title 69, "Public Health and Safety," Revised Codes of Montana, 1947, to be numbered Chapter 32, under said Title 69, said Chapter 32 to be entitled, "State Board of Health—Maternal and Child Health Services—Educative Program—School Nurses—Supervision by Board—Authority of Counties and School Boards—Services for Crippled Children—Education for Children and Adults in Use and Abuse of Narcotics" and to contain five (5) sections numbered, successively, as sections 69-3201, 69-3202, 69-3203, 69-3204, and 69-3205, Revised Codes of Montana, 1947, as follows:"

Chapter 121, Laws of 1917, referred to in this section, was repealed by Sec. 28, Ch. 264, Laws 1955.

#### Title of Act

An act to simplify the organization of the state board of health of the state of Montana, and to coordinate the functions, powers and duties of the board; to make the board, as a board, the central and responsible agency in the field of public health in the state of Montana, with respect to the multiple functions assigned to it, the powers delegated to it, and the duties prescribed for it, by the legislative assembly; to lodge and concentrate in the state board of health, as a board, functions, powers and duties that have been heretofore assigned, or conceived to be assigned, to officers, appointees, or employees of the board, whether referred to as "director" of a "division" or otherwise referred to, titled or designated in existing legislation; to provide that all persons

employed by the board, or authorized by, for or on behalf of the board to exercise any power or function, or to discharge any duty, shall at all times act in subordination to the board and in compliance with its rules and regulations and its orders and directives; and to authorize the board to assign duties and to organize and coordinate its internal administration without regard to titles of appointees, or the names or titles of functional divisions or units of administration; withholding from the board, however, authority to create, establish or set up additional or new functions not delegated to it by the legislative assembly; to provide for the organization and administration of the state board of health laboratory, and its services; and, in order to accomplish such purposes and such revisions, to amend the following sections of the Revised Codes of Montana, 1947: section 69-105 (2448) relating to functions, powers and duties of the board and to its internal organization and administration, and to control by the board of its appointees and employees; section 69-201 relating to functions, powers and duties of the board in the field of industrial hygiene; section 69-301 relating to functions, powers and duties of the board in the field of tuberculosis control; sections 69-401, 69-403, and 69-404, relating to functions, powers and duties of the board in the field of dental health; sections 69-502, 69-506, and 69-519, relating to functions, powers and duties of the board in the field of vital statistics, and to the accounting for fees received; section 69-901 (2540) relating to functions, powers and duties of the board in the field of epidemic, communicable and other diseases and to the person appointed by the board and described as state epidemiologist or otherwise, under the board; section 69-1101 (2562) relating to the functions, powers and duties of the board in the field of venereal disease; sec-

tion 69-1102, relating to the acceptance and disbursement of federal moneys for the suppression of venereal disease; sections 69-2802, 69-2803, 69-2804, 69-2805, 69-2807, 69-2808, 69-2810, 69-2813, relating to the functions, powers and duties of the board in connection with cold storage of food for human use, refrigerated lockers, issuance and cancellation of licenses; license fees; prosecutions for violations, and rules and regulations in the exercise of such functions, powers and duties in such field; section 69-3003, relating to the functions, powers and duties of the board in the field of hospital survey and construction; sections 71-706, 71-707, and 71-710, relating to definitions, organization and administration of activities of the state department of public welfare pertaining to child welfare services; and to enact under Title 69, Revised Codes of Montana, 1947, entitled "Public Health and Safety," a chapter to be numbered Chapter 32, to be entitled, "State Board of Health—Maternal and Child Health—Services for Crippled Children; Education for Children and Adults with Respect to

Use and Abuse of Narcotics"; and to state and define in sections numbered 69-3201 through 69-3205, inclusive under said chapter 32, the functions, powers and duties of the board in the fields of (a) maternal and child health, and (b) services for crippled children, in lieu of the sections on each of said subjects repealed or amended hereby, and to provide against duplication of services by said board and the state department of public welfare, and for cooperation with the state superintendent of public instruction, and (c) in the field of narcotic education, in lieu of sections 54-206, 54-207, 54-208, and 54-209, repealed hereby; and to repeal sections 10-401 (2503), 10-402 (2504), 10-403 (2505), 10-404 (2506), 10-405 (2507), 10-406 (2508), 10-407 (2509), and 10-408 (2510) Revised Codes of Montana, 1947, and to repeal sections 69-106 (2449), 69-108 (2451), 69-302, and 69-903 (2542), Revised Codes of Montana, 1947, and to repeal sections 71-701, 71-702, 71-703, 71-704, and 71-705, Revised Codes of Montana, 1947; providing for the effective date.

**69-3202. School nurses—county nurses—supervision—rules and regulations.** (a) School boards may employ, in their discretion, regularly qualified nurses, duly registered in the state of Montana, to act as school nurses. In sparsely settled communities two (2) or more school boards may unite and employ a school nurse, the salary of such nurse being paid pro rata according to the assessed valuation in the school districts.

(b) County commissioners are hereby authorized at such time as they deem necessary, to employ regularly qualified nurses, to be known as county nurses, for duties pertaining to maternal and child health.

(c) The state board of health is hereby constituted the agency of the state of Montana to supervise and regulate school, county and public health nurses in the performance of their duties under all such employments; and the board shall make, publish, and from time to time, revise and amend, as necessary, and, at all times, enforce suitable rules and regulations governing the qualifications and professional activities, duties, services and administrations of school, county and public health nurses, as such, and all such regulations when properly adopted, properly identified and reasonably adequate to protect public health, shall have the force of law. In formulating such rules and regulations, and in its supervisory functions, the board shall consult with the state superintendent of public instruction, with respect to health measures in the schools and the board shall cooperate generally with school boards, and with city, county and local boards of health, in all such matters, and it shall instruct and encourage all such nurses on all matters of school or public health.

(d) The board shall cause to be prepared and distributed to the school, county and public health nurses all necessary report forms and blanks, and it shall be the duty of all such nurses to execute such forms and

blanks promptly, informatively and accurately, in compliance with the board's requirements.

**History:** En. 69-3202 by Sec. 24, Ch. 264, L. 1955.

**69-3203. Services for crippled children.** The state board of health is hereby authorized and directed to develop and administer a program for services to crippled children, which shall have for its purpose, as far as practicable under the conditions existing in the state of Montana, to supply, extend and improve the services designated by this act for crippled children in the state of Montana. These services shall consist of locating such children and providing diagnosis, medical, surgical and corrective treatment, after-care and related services for children who are crippled, or who are suffering from conditions which lead to crippling; and the board may, in its discretion, within the limits of its funds, provide services for children who are afflicted with or suffering from rheumatic fever, or heart diseases, and who are totally incapacitated for education or for remunerative occupation. Special attention shall be given to this program in rural areas and in areas suffering from severe economic distress. The board shall do all things that are necessary to carry out this program, insofar as means are available and conditions in this state justify, and shall proceed in conformity with the social security act of the United States, rules and regulations promulgated by the U. S. children's bureau, and the statutes of the state of Montana.

**History:** En. 69-3203 by Sec. 24, Ch. 264, L. 1955.

**69-3204. Narcotic education.** (a) The state board of health is hereby authorized and directed to establish and administer as part of its public health education activities, a program of narcotic education, whereby it shall carry to the general public and to and in all educational institutions in Montana, from the elementary school through the institutions of higher learning, the scientific facts concerning narcotic drugs, their use and abuse.

(b) The state board of health is authorized and hereby empowered to appoint and employ a health educational consultant with special training in narcotic education to carry out the provisions of this act, who shall be under the merit system and whose educational qualifications shall meet merit system requirements of other health education consultants.

**History:** En. 69-3204 by Sec. 24, Ch. 264, L. 1955.

**69-3205. Appointment of personnel to execute function and activities, under Chapter 32, Title 69, Revised Codes, 1947.** The state board of health shall appoint and employ such personnel as are necessary to carry out and execute effectively the functions, activities, and the duties and responsibilities with which the board is charged under this Chapter 32, Title 69, added hereby to said title of the Revised Codes of Montana, 1947, in (a) the field of maternal and child health, including the supervision of nurses employed by the state, cities, counties, and by school boards, (b) in the field of services for crippled children, and (c) in the field of narcotic education, including such technically qualified or technically trained, and com-



petent personnel as may be required for each of such fields, within the limits of appropriations by the legislative assembly, or within the limits of grants and allowances from the United States, or of contributions, donations, and gifts from philanthropic foundations, corporate or otherwise, or from any other donors for any of such purposes. The acceptance of such contributions, donations and gifts, and the use of the funds derived therefrom by the state board of health is hereby authorized. The state board of health and the state department of public welfare shall carefully coordinate their respective services to avoid any conflict or duplication.

History: En. 69-3205 by Sec. 24, Ch. 264, L. 1955.

### CHAPTER 33—GEOPHYSICAL EXPLORATION

- Section 69-3301. Persons required to comply with act.  
 69-3302. Deemed doing business within state—resident agent.  
 69-3303. Filing of notice of intention to engage in geophysical exploration.  
 69-3304. Surety bond required—amount—filing—certificate of filing.  
 69-3305. Issuance of geophysical exploration permit—requirements—contents—period valid for—costs—carrying of permit.  
 69-3306. Duty to file record showing where work performed—time for—request to file location of shotpoint and date fired—complaint of property owners.  
 69-3307. Duty of county attorneys to enforce act.  
 69-3308. Failure to comply with act—misdemeanor.

**69-3301. Persons required to comply with act.** A person, firm or corporation operating individually or through agents within the state of Montana for the purpose of geophysical exploration, in which exploration the seismograph is utilized along with explosives for the determination of geophysical data for any purpose whatsoever, and which person, firm or corporation either through its own employees or by hiring the services of others operates "seismograph crews," as the term is generally known, shall comply with the following provisions of this act; provided, however, that compliance with the provisions of this act by a seismograph crew or its employer shall constitute compliance herewith by that person, firm or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

History: En. Sec. 1, Ch. 235, L. 1955.

#### Title of Act

An act defining geophysical exploration; persons, firms or corporations engaged in geophysical exploration deemed engaged in doing business in Montana; necessity for filing notice of intention to engage in geophysical exploration with county clerk and recorder; necessity for filing bond with secretary of state; issuance of geophysical exploration permit by

county clerk and recorder and contents of said permit; cost of said permit and disposition of revenues therefrom; necessity of having said permit in possession during periods of exploration; furnishing of information on geophysical exploration performed; duty of county attorneys to prosecute violations hereof; violation deemed misdemeanor, and repealing all acts and parts of acts in conflict herewith.

**69-3302. Deemed doing business within state—resident agent.** A person, firm or corporation shall be deemed to be doing business within the state of Montana when engaged in such geophysical exploration, within the boundaries of this state, and shall, if not already qualified to do

business within this state with a designation of an agent within the state for service of process, prior to such time, file with the secretary of state of the state of Montana an authorization, which authorization shall designate a resident agent for the service of process in any action which may be pending in a court in this state, which cause of action may have arisen out of such geophysical exploration.

**History:** En. Sec. 2, Ch. 235, L. 1955.

**69-3303. Filing of notice of intention to engage in geophysical exploration.** It shall be necessary for any person, firm or corporation desiring to engage in such geophysical exploration within the state of Montana, prior to actually so engaging in such exploration, to file a notice of intention to engage in such geophysical exploration with the county clerk and recorder in each county in which exploration is to be carried on, or engaged in. The said notice of intention to engage in such geophysical exploration shall be filed prior to the actual commencement of such geophysical exploration.

**History:** En. Sec. 3, Ch. 235, L. 1955.

**69-3304. Surety bond required—amount—filing—certificate of filing.** A person, firm or corporation desiring to engage in such geophysical exploration, shall also file with the secretary of state a good and sufficient surety bond in the amount of ten thousand dollars (\$10,000.00) for a single such geophysical crew or a blanket surety bond in the amount of twenty-five thousand dollars (\$25,000.00) for all such geophysical crews operating within the state for such person, firm or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such geophysical exploration, and the said bond shall remain on file with the secretary of state so long as the exploration is carried on or engaged in, plus an additional two (2) years thereafter; provided, however, that the aggregate liability of the surety shall, in no event, exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm or corporation.

**History:** En. Sec. 4, Ch. 235, L. 1955.

**69-3305. Issuance of geophysical exploration permit—requirements—contents—period valid for—costs—carrying of permit.** The county clerk and recorder of each county in the state of Montana, upon compliance with the provisions herein contained, namely the filing of a notice of intention to engage in such geophysical exploration, in addition to a certificate or photostatic copy thereof from the secretary of the state of Montana certifying the name and address of the resident agent for service of process for said person, firm or corporation desiring to engage in such geophysical exploration, and certifying that the required surety bond has been filed with the said secretary of state, shall issue to such person, firm or corporation a "geophysical exploration permit," which permit will show the names of the person, firm or corporation; his or its principal

place of business; if a firm or corporation, the names and addresses of its officers; the name and address of the resident agent for service of process for said person, firm or corporation; that a notice of intention to engage in such geophysical exploration has been duly filed; that a good and sufficient surety bond has been filed by the said person, firm or corporation, naming the surety company and giving its address; such permit to be signed by the county clerk and recorder and/or his deputy, and bearing the official county seal. Such permit shall be valid and effective for all such geophysical crews of the permittee during the calendar year in which it is issued. The cost of the said permit shall be five dollars (\$5.00) per calendar year or any portion thereof for which issued, and the revenues realized therefrom shall go to the county so issuing. Such funds as are realized shall be applied toward payment of the cost of printing said permits, which shall be printed at the county seat, and such excesses shall, from year to year, go into the county's general fund; provided, however, that if printed forms are not available at the time any person, firm or corporation desires such permit and qualifies for its issuance, typewritten or other form of reproduction of such permit may be used and the fee of five dollars (\$5.00) shall nevertheless be paid for its issuance and such fee shall be disposed of in the same manner. The said permit or photostatic copy thereof shall be carried by the person, or the agent of the firm or corporation, at all times during the period of such geophysical exploration and shall be exhibited upon demand by any county or state official.

**History:** En. Sec. 5, Ch. 235, L. 1955.

**69-3306. Duty to file record showing where work performed—time for—request to file location of shotpoint and date fired—complaint of property owners.** Within three (3) months from the day any firing of shotpoints in such geophysical exploration is done by any person, firm or corporation within this state, such person, firm or corporation shall file with the county clerk and recorder of the county in which such work was done a record showing each township and range within said county in which such work was performed and the approximate date at which such work was performed. Such person, firm or corporation shall file with said county clerk and recorder a record showing the location of each such shotpoint and date fired within a maximum area of any square, four-section area of land, upon written request therefor by said county clerk and recorder, which request must be based upon the complaint of a property owner that physical damages to such property have arisen by reason of the use of the seismograph and explosives in such geophysical operations at some location within said maximum four-mile square area, and such written notice shall designate the name and address of the complaining person and shall describe the approximate date of the alleged damages and the nature of the alleged damages. The required record of operations in response to such written demand therefor by the county clerk and recorder shall be supplied within ten (10) days from the date on which such written demand is received.

**History:** En. Sec. 6, Ch. 235, L. 1955.



**69-3307. Duty of county attorneys to enforce act.** It shall be the duty of the several county attorneys to see that the provisions herein contained are complied with and that this law is enforced.

**History:** En. Sec. 7, Ch. 235, L. 1955.

**69-3308. Failure to comply with act—misdemeanor.** A failure to comply with the terms of this act shall be deemed a misdemeanor and shall be punishable as is elsewhere provided in this code, either by fine or imprisonment, or both.

**History:** En. Sec. 8, Ch. 235, L. 1955.

**Repealing Clause**

Section 9 of Ch. 235, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 34—SANITARIANS**

- Section 69-3401. Definitions.  
 69-3402. Sanitarians registration council.  
 69-3403. Application for registration by examination.  
 69-3404. Fees.  
 69-3405. Revocation or suspension.  
 69-3406. Penalty.  
 69-3407. Reciprocity.  
 69-3408. Appeal procedure.  
 69-3409. Service of process.

**69-3401. Definitions.** "Board" means the Montana state board of health. "Council" means the sanitarians registration council, hereby created. "Sanitarian" is a person who is trained in physical, biological and sanitary sciences to carry out inspectional and educational duties in the field of environmental sanitation. "Registered sanitarian" is a sanitarian registered in accordance with the provisions of this act. "Certificate of registration" is a document showing the name of a registered sanitarian, the date of issue, serial number, and bearing the signatures of the designated members of the council hereby authorized to grant such certificate and under the seal of said council. "Montana association of sanitarians" means an organization of Montana sanitarians affiliated with the national association of sanitarians. "Montana joint merit council" is an authorized group for screening applicants for state employment.

**History:** En. Sec. 1, Ch. 174, L. 1959.

**Title of Act**

An act relating to the creation of a sanitarians registration council, appointed by the Montana state board of health; providing definitions of terms; manner of registration of sanitarians by examination and without examination under certain circumstances; establishing fees; providing the manner and grounds for revocation of certificates by the board of registered sanitarians; providing penalties for practicing as a registered sanitarian without a certificate; prescribing mini-

mum and maximum penalties for violations of this act and conferring jurisdiction over all prosecutions hereunder upon the district court; empowering the sanitarians registration council to issue certificates of registration to sanitarians registered by another state; providing the manner of review of decisions of the council and manner of service of legal papers upon the council; directing that unconstitutionality of a part of this act shall not affect or impair the remainder; and repealing all acts or parts of acts in conflict herewith.

**69-3402. Sanitarians registration council.** A council to be known as the sanitarians registration council is hereby established to consist of three

(3) sanitarians appointed by the board. The initial council shall be selected by the board from a list of not less than four (4) qualified and practicing sanitarians whose names shall be submitted to the board by the Montana association of sanitarians at least thirty (30) days prior to the next appointment date. On July 1, 1959, or as soon thereafter as is practicable, the members of the first council shall be appointed. One (1) member shall be a sanitarian employed by the board and shall act as secretary-treasurer. The term of the secretary-treasurer shall be for one (1) year and shall be appointed yearly, thereafter, by the board. One (1) member shall serve two (2) years, one (1) member shall serve three (3) years, and members thereafter shall serve for a period of three (3) years or until qualified successors are appointed. The members of the council shall serve without compensation but shall be reimbursed for their actual and necessary traveling and other expenses while engaged in the business of the council. The council shall, at its first meeting after July 1, 1959, elect from its members a chairman to serve until the first November meeting, and adopt a common seal for the authentication of its orders and records. The members of the council shall meet during the month of November of each year, the first meeting to be in November, 1959, and at such other times and places as the council may determine. The chairman and secretary-treasurer shall have power to administer oaths in examination of applications for certificates, and to witnesses called before the board for the transaction of business under the provisions of this act. The council shall keep a record of all its proceedings and a register disclosing the names, ages, and addresses of all applicants for a certificate, and whether each application was granted or denied. Such register shall constitute prima facie evidence of all matters therein entered. The council shall accept applications for registration, grant or deny the same, order and conduct hearings upon applications when it determines in its discretion such hearings are necessary, issue certificates to persons granted registration, order and conduct hearings to revoke or suspend registration, adopt such rules and regulations not inconsistent with this act as it determines are necessary and proper for its function and administration, and not inconsistent with the board.

**History:** En. Sec. 2, Ch. 174, L. 1959.

**69-3403. Application for registration by examination.** Any person, upon the payment of the fees prescribed herein, may apply to the council for registration on forms provided for that purpose. Each applicant shall submit evidence and prove to the satisfaction of the council that he meets one of the following qualifications for registration hereunder. (a) That he or she has qualified, as required by the board and the joint merit council, and successfully passed the examination for sanitarian 1 or higher. (b) That he or she was a resident of the state of Montana for one (1) year immediately preceding the passage and approval of this act and that he or she was engaged as a professional sanitarian in the state of Montana for one (1) year immediately preceding July 1, 1959, providing that registration shall not be granted under this subsection unless the application therefor is filed with the council within one (1) year after the passage

and approval of this act. (c) The council shall issue a certificate of registration to all applicants who meet the above qualifications. (d) An applicant for examination may, in the discretion of the council, be given a temporary certificate to practice as a registered sanitarian prior to taking the examination. The term of such certificate shall not exceed one (1) year.

**History:** En. Sec. 3, Ch. 174, L. 1959.

**69-3404. Fees.** Applicants for registration shall pay a fee of twenty dollars (\$20) at the time of making application. A sanitarian registered under the provisions of this act may renew his certificate by paying an annual fee as set by the board, but not to exceed ten dollars (\$10). All fees collected shall be paid to the board of health and held in a special fund and shall be used to defray the cost of administration of this act in accordance with a budget developed by the council and the board. All fees shall be due and payable on or before the first day of July for the current year for which the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations which have lapsed for failure to pay renewal fees may be reinstated under regulations adopted by the council.

**History:** En. Sec. 4, Ch. 174, L. 1959.

**69-3405. Revocation or suspension.** The council shall have the power to revoke or suspend the certificate of registration of any registrant for unprofessional conduct or the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency or misconduct in the practice of professional sanitation, or upon the conviction of any crime involving moral turpitude, provided, however, that no revocation of certificate shall become effective until after a hearing, duly noticed, is held and the registrant given the opportunity to appear in person or by counsel and to answer the charges which have been filed against him with the council and to produce evidence and witnesses on his behalf and to cross-examine witnesses.

**History:** En. Sec. 5, Ch. 174, L. 1959.

**69-3406. Penalty.** After January 1, 1960, no person shall offer his services as a sanitarian or use, assume, or advertise in any way, any title, or description tending to convey the impression that he is a sanitarian unless he is a holder of a current certificate of registration as provided in this act. A holder of a current certificate is entitled to append to his name the letters "R. S." Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200), or imprisonment in the county jail for not less than ten (10) days nor more than ninety (90) days, or both. The district court shall have jurisdiction of all prosecutions brought under this act.

**History:** En. Sec. 6, Ch. 174, L. 1959.

**69-3407. Reciprocity.** The council shall issue a certificate of registration without examination to any person who makes application on forms



prescribed and furnished by the council, pays the registration fee of twenty dollars (\$20) and submits satisfactory proof that: (1) he is of good moral character. (2) he is registered as a sanitarian in a state in which the qualifications for registration are not lower than the qualifications for registration in this state at the time he applies for registration.

**History:** En. Sec. 7, Ch. 174, L. 1959.

**69-3408. Appeal procedure.** Any party aggrieved by any decision or act of the council may seek a review thereof in the district court of the first judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, inclusive, Revised Codes of Montana of 1947, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

**History:** En. Sec. 8, Ch. 174, L. 1959.

**69-3409. Service of process.** When any petition or complaint is filed in any court naming the Montana sanitarians registration council as a party, process may be served upon the said council by delivering to and leaving with the secretary-treasurer of said council a true copy of the summons, writ, or order, as the case may be, and a true copy of the complaint, petition, or application upon which such summons, writ, or order was based.

**History:** En. Sec. 9, Ch. 174, L. 1959.

#### **Separability Clause**

Section 10 of Ch. 174, Laws 1959 read "Severability. If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inopera-

tive, it shall not affect the remaining portions of this act."

#### **Repealing Clause**

Section 11 of Ch. 174, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## **CHAPTER 35—MOTORBOAT AND VESSEL REGULATION**

Section 69-3501.	Declaration of policy.
69-3502.	Definitions.
69-3503.	Operation of unnumbered motorboats or vessels prohibited.
69-3504.	Identification number.
69-3505.	Equipment.
69-3506.	Exemption from numbering provisions of this act.
69-3507.	Boat liveries.
69-3508.	Prohibited operation.
69-3509.	Right of way.
69-3510.	Restricted areas.
69-3511.	Overloading and overpowering.
69-3512.	Collisions, accidents and casualties.
69-3513.	Transmittal of information.
69-3514.	Water-skis and surfboards.
69-3515.	Owner's civil liability.
69-3516.	Filing of regulations.
69-3517.	Enforcement of act.
69-3518.	Penalty.

**69-3501. Declaration of policy.** It is the policy of this state to promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws relating thereto.

**History:** En. Sec. 1, Ch. 285, L. 1959.

**Title of Act**

An act prescribing rules and regulations for numbering and registering motorboats and vessels in the state of Montana; defining terms and designating the fish and game commission of the state of Montana as the state agency responsible for the administration of said act in the state of Montana; providing minimum equipment requirements for motorboats and vessels; establishing safety regulations for the use

and operation of motorboats and vessels in the state of Montana; establishing safety regulations for the use of water-skis, surfboards and similar devices; providing penalties for violation of said act; repealing sections 94-35-266, 94-35-267, and 94-35-268 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict with this act; providing a savings clause and effective date.

**69-3502. Definitions.** As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": for purposes of registration "vessel" shall mean those watercraft described under section 3 of public law 85-911, H. R. 11078 unless otherwise defined by the fish and game commission of the state of Montana as pertains to the safety regulations of this act "vessel" means every description of watercraft other than a seaplane on the water capable of being used as a means of transportation on water.

(2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

(3) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Waters of this state" means any waters within the territorial limits of this state.

(5) "Person" means an individual, partnership, firm, corporation, association or other entity.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) The word "board" shall mean the fish and game commission of the state of Montana.

**History:** En. Sec. 2, Ch. 285, L. 1959.

**69-3503. Operation of unnumbered motorboats or vessels prohibited.** Every motorboat or vessel on the waters of this state propelled by machinery of more than ten horsepower shall be numbered. No person shall operate or give permission for the operation of any motorboat or vessel on such waters unless the motorboat or vessel is numbered in accordance with this act, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, unless (1) the certificate of number awarded to such motorboat or vessel is in full force and effect, and (2) the identifying number set forth in the certificate of number is displayed on such motorboat or vessel.

**History:** En. Sec. 3, Ch. 285, L. 1959.

**69-3504. Identification number.** (a) The owner of each motorboat or vessel requiring numbering by this state shall file an application for number with the board or its designated representative, on forms approved by the board. The application shall be signed by the owner of the motorboat or vessel, and shall be accompanied by a fee of three (\$3.00) dollars. Upon receipt of the application in approved form, the board shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat or vessel and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat or vessel, the identification number in such manner as may be prescribed by rules and regulations of the board, in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat or vessel for which issued, whenever such motorboat or vessel is in operation.

(b) The numbering requirements of this act shall apply to motorboats or vessels operated by manufacturers or dealers except that the description of the motorboat or vessel shall be omitted from the certificate of number and such number shall be permitted to be transferred from one vessel to another. In lieu of the descriptive material on said certificate of number the word "manufacturer" or "dealer" as appropriate, will appear on said certificate. The manufacturer or dealer may have the number awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to a vessel to be demonstrated or tested so long as the number is exhibited so as to in all other respects meet the requirements of act relating to display of numbers.

(c) The owner of any motorboat or vessel already covered by a number in full force and effect, which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state, shall record the number prior to operating the motorboat or vessel on the waters of this state in excess of the ninety day reciprocity period provided for in section 6 (1) [69-3506(1)] of this act. Such recordation shall be in the manner and pursuant to the procedure required for the award of number under subsection (a) of this section, except that no additional or substitute number shall be issued.

(d) Should the ownership of a motorboat or vessel change, a new application form with fee shall be filed with the board and a new certificate of number shall be awarded in the same manner as provided for in an original award of number, provided further that the number assigned may be determined by the board.

(e) In the event that an agency of the United States government shall have in force an over-all system of identification numbering for motorboats or vessels within the United States, the numbering system employed pursuant to this act by the board shall be in conformity therewith.

(f) The board may award any certificate of number directly or may authorize any person to act as agent for the awarding thereof. In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award, in conformity



with this act and with any rules and regulations of the board shall be valid as if awarded directly by the board.

(g) All records of the board made or kept pursuant to this act shall be public records; provided that the board shall submit to the registrar of motor vehicles of this state, correct copies of all certificates of registration issued pursuant to this act; and provided further that said registrar shall make said records immediately available to all law enforcement offices of this state.

(h) Every certificate of number awarded pursuant to this act shall continue in full force and effect for a period not to exceed three years, unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of the same. The board shall notify each owner of a registered vessel of expiration of registration a reasonable time prior to expiration of registration.

(i) The board shall fix a day and month of the year on which certificates of number due to expire during the calendar year shall lapse and no longer be of any force and effect unless renewed pursuant to this act.

(j) In event of transfer of ownership, the purchaser shall furnish the board notice of the acquisition of all or any part of his interest other than the creation of a security interest in a motorboat or vessel numbered in this state pursuant to subsections (a) and (b) of this section, or of the destruction or abandonment of such motorboat or vessel, within reasonable time thereof. Such transfer, destruction or abandonment shall terminate the certificate of number for such motorboat or vessel except that in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat or vessel, such transfer shall not terminate the certificate of number.

(k) Any holder of a certificate of number shall notify the board within reasonable time if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the board with his new address. The board may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(1) No number other than the number awarded to a motorboat or vessel or granted reciprocity pursuant to this act, shall be painted, attached or otherwise displayed on either side of the bow of such motorboat or vessel.

**History:** En. Sec. 4, Ch. 285, L. 1959.

**69-3505. Equipment.** Every vessel shall have aboard:

(1) One life preserver, buoyant vest, ring buoy or buoyant cushion of the type approved by the commandant of the United States coast guard in good and serviceable condition for each person on board; provided, that any person or persons, twelve (12) years of age or younger, occupying a vessel while such vessel is in motion, shall have a life preserver of a type

approved by the commandant of the United States coast guard securely fastened to his or her person.

(2) When in operation during hours of darkness, a light sufficient to make the motorboat's or vessel's presence and location known to any and all other vessels within a reasonable distance.

(3) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to, and during the time such motorboat or vessel is occupied by any person.

(4) Every motorboat shall be provided with a reasonable number of fire extinguishers or other fire fighting device declared suitable by the board, capable of promptly and effectually extinguishing burning gasoline, which fire extinguishers shall be at all times kept in condition for immediate and effective use, and shall be so placed as to be readily accessible.

(5) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrestor, backfire trap, or other similar device.

(6) The board is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(7) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

**History:** En. Sec. 5, Ch. 285, L. 1959.

**69-3506. Exemption from numbering provisions of this act.** A motorboat or vessel shall not be required to be numbered under this act, if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided, that such vessel shall not have been within this state for a period in excess of ninety (90) consecutive days.

(2) A vessel from a country other than the United States temporarily using the waters of this state.

(3) A vessel whose owner is the United States, a state or subdivision thereof.

(4) A ship's lifeboat.

**History:** En. Sec. 6, Ch. 285, L. 1959.

**69-3507. Boat liveries.** (a) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designated or permitted by him to be operated; the identification number thereof; and the departure date and time, and the expected time of return. The record shall be preserved for at last six (6) months.

(b) Neither the owner of a boat livery, nor his agent or employee

shall permit any motorboat or any vessel designed or permitted by him to be operated as a motorboat or vessel to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to section 5 [69-3505] of this act and any rules and regulations made pursuant thereto.

**History:** En. Sec. 7, Ch. 285, L. 1959.

**69-3508. Prohibited operation.** (a) No person shall operate or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate, or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

(c) It shall be unlawful for the owner of any motorboat or vessel, or any person having such in charge or in control, to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(d) No person shall operate, or knowingly permit any person to operate, any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead; provided, however, that nothing in this act is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(e) No person shall make reckless approach to or passage by a dock, ramp, diving board or float.

(f) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest or ring buoy.

**History:** En. Sec. 8, Ch. 285, L. 1959.

**69-3509. Right of way.** (a) When two vessels are approaching each other "head on," or nearly so (so as to involve risk of collision), each vessel shall bear to the right and pass the other vessel on its left side.

(b) When vessels approach each other obliquely or at right angles, the vessel approaching on the right side has the right of way.

(c) One vessel may overtake another on either side but shall grant right of way to the overtaken vessel.

(d) When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboat shall yield the right of way to the sailboat in all cases.

**History:** En. Sec. 9, Ch. 285, L. 1959.

**69-3510. Restricted areas.** (a) No person shall so anchor a vessel or other obstacles for fishing or pleasure purposes, on any body of water over which the state has jurisdiction, in such a position as to obstruct a passageway ordinarily used by other vessels.



(b) No person shall operate a pleasure vessel within twenty (20) feet of the exterior boundary of a water area which is clearly marked by buoys or some other distinguishing device as a bathing or swimming area.

(c) Swimming areas shall be marked with yellow and red colored buoys by the owners of such areas.

(d) No person shall operate or knowingly permit any person to operate a vessel within twenty (20) feet of a person engaged in fishing without permission, or unless unavoidable.

**History:** En. Sec. 10, Ch. 285, L. 1959.

**69-3511. Overloading and overpowering.** (a) No vessel shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other normal operating conditions.

(b) No vessel shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

**History:** En. Sec. 11, Ch. 285, L. 1959.

**69-3512. Collisions, accidents and casualties.** (a) It shall be the duty of the operator of a vessel involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or other casualty, such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his name, address and identification of his vessel in writing to any person injured and to the owner, or person in control of any property damaged in the collision, accident or other casualty.

(b) The board shall prepare and distribute to each sheriff's office of this state, a standardized accident report form; any person involved in a collision, accident or other casualty involving a death, personal injury or property damage in excess of one hundred dollars (\$100.00) shall immediately report such collision, accident or other casualty to the sheriff's office of the county in which the collision, accident or casualty occurred and fill out a standardized accident report form.

(c) It shall be the duty of any sheriff advised of a collision, accident or other casualty reported under this act; to (1) conduct an appropriate investigation of such collision, accident or other casualty and (2) to prepare and submit a report of the results of said investigation, together with the completed standardized accident report forms to the board.

**History:** En. Sec. 12, Ch. 285, L. 1959.

**69-3513. Transmittal of information.** In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the board pursuant to section 12 (b) and (c) [69-3512 (b) and (c)] shall be transmitted to said official or agency of the United States.

**History:** En. Sec. 13, Ch. 285, L. 1959.

**69-3514. Water-skis and surfboards.** (a) No person shall operate a vessel on any waters of this state towing a person or persons on water-skis, a surfboard, or similar device, nor shall any person engage in water-skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise; provided, however, that the provisions of this subsection do not apply to a performer engaged in a professional exhibition or a person or persons engaged in a regatta or race authorized under this act.

(b) All right of way rules applying to the towing vessel shall apply.

**History:** En. Sec. 14, Ch. 285, L. 1959.

**69-3515. Owner's civil liability.** The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of the provisions of the statutes of this state, or neglecting to observe such ordinary care and such operation as the rules of the common law require. The owner shall not be liable, however, unless such vessel is being used with his or her express or implied consent. It shall be presumed that such vessel is being operated with the knowledge and consent of the owner, if at the time of the injury or damage, it is under the control of his or her spouse, father, mother, brother, sister, son, daughter or other immediate member of the owner's family. Nothing contained herein shall be construed to relieve any other person from any liability which he would otherwise have, but nothing contained herein shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

**History:** En. Sec. 15, Ch. 285, L. 1959.

**69-3516. Filing of regulations.** A copy of the regulations adopted pursuant to this act, and of any amendments thereto, shall be filed in the office of the board and in the office of the secretary of state. Rules and regulations shall be published by the board in a convenient form and made easily available to all vessel operators.

**History:** En. Sec. 16, Ch. 285, L. 1959.

**69-3517. Enforcement of act.** It shall be the duty of the sheriffs of the various counties in state, and game wardens, or any peace officer in the state of Montana to enforce the sections of this law.

**History:** En. Sec. 17, Ch. 285, L. 1959.

**69-3518. Penalty.** Violations of any section of this act shall be a misdemeanor and be punishable by fine of not less than ten dollars (\$10.00) or more than five hundred dollars (\$500.00) or by imprisonment up to thirty (30) days, or by both such fine and imprisonment.

**History:** En. Sec. 18, Ch. 285, L. 1959.

#### **Separability Clause**

Section 19 of Ch. 285, Laws 1959 read "Savings clause. If any competent court shall find any section or sections of this act to be unconstitutional or otherwise invalid, such finding shall not affect the validity of all remaining sections of this act which can be given effect."

#### **Repealing Clause**

Section 20 of Ch. 285, Laws 1959 read "Sections 94-35-266, 94-35-267 and 94-35-268 of the Revised Codes of Montana, 1947, and any acts or parts of acts in conflict herewith are hereby repealed."

#### **Effective Date**

Section 21 of Ch. 285, Laws 1959 provided the act should be effective from and after the date of its passage and approval. Approved March 18, 1959.

## TITLE 70—PUBLIC UTILITIES

### Chapter 4. Television, 70-401 to 70-407.

#### CHAPTER 1—PUBLIC SERVICE COMMISSION—REGULATION OF PUBLIC UTILITIES

##### 70-103. (3881) "Public utility" defined.

###### References

Cited or applied in State ex rel. Olsen

v. Public Service Commission, 129 M 101, 283 P 2d 602, 604.

##### 70-105. (3883) Public utilities to furnish service for reasonable charges.

###### References

Cited or applied in State ex rel. Olsen v. Public Service Commission, 131 M 272, 309 P 2d 1035, 1038.

###### Collateral References

Right to cut off water supply because of failure to pay sewer service charge. 26 ALR 2d 1359.

##### 70-106. (3884) Power of commission to ascertain property values.

###### Investigation by Commission

The provision of this section authorizing the commission to make an investigation is permissive only and it is not mandatory that the commission make its separate investigation. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 639. (Dissenting opinion on this point, 131 M 104, 308 P 2d 633 at 640.)

The statute is silent as to what methods the commission must use in ascertaining the value of the property and the commission has a wide latitude in choosing a method of arriving at the value of the plant used and useful in serving the public. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 637.

###### Value of Property

###### Method of Ascertaining Value of Property

Commission did not err in fixing the value of the plant where they considered reproduction cost new less depreciation; the original cost less depreciation; and the assessed value so far as taxable property was concerned. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 637.

While the statute does not establish a formula for arriving at fair value, it does require such value to be found and used as a base in fixing rates. The reasonableness and justness of the rates must be related to this finding of fair value. State ex rel. Olsen v. Public Service Commission, 131 M 272, 309 P 2d 1035.

##### 70-118. (3896) Employment of engineer and other help—salary, etc.

###### References

Cited or applied in State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 640.

##### 70-119. (3879) Complaints against public utility—hearing.

###### References

Cited or applied in State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 639.

##### 70-128. (3906) Action to set aside rates or charges fixed by commission.

###### Demurrer

That part of this section which requires the commission and other parties defendant to file their answer to the complaint within thirty days does not preclude the

filing of a demurrer. There is no reason why the commission may not properly demur upon grounds which raise only questions of law that are preliminary to a consideration of the case on the merits.



As to the contention that this results in the delay of the trial, it is sufficient to say that it is proper for the court to extend the time for answering for a reasonable time after disposition of the demurrer. *State ex rel. Olsen v. Public Service Commission*, 129 M 106, 283 P 2d 594, 596.

#### Review on Appeal

On review, if the commission's order and findings therein are supported by evidence and credible proof, the courts will sustain it. *State ex rel. Olsen v. Public Service Commission*, 131 M 272, 309 P 2d 1035, 1040.

### CHAPTER 3—TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT AND POWER LINES

#### 70-301. (6645) Rights-of-way for pole lines along streets, roads, etc.

##### References

Cited or applied in *Marchi v. Brackman*, 130 M 228, 299 P 2d 761, 764.

### CHAPTER 4—TELEVISION

- Section 70-401. Purpose of act.  
 70-402. Definitions.  
 70-403. License required for operation of VHF booster or VHF translator system.  
 70-404. Application—contents.  
 70-405. Issuance of license—fee—additional information.  
 70-406. Rules and regulations.  
 70-407. Penalty for violation of act.

**70-401. Purpose of act.** It is the purpose of this act to provide for the continuation of television service to all sectors of the state of Montana, particularly in those sparsely settled regions of this state that are unable to support their own television stations, through the authorization of the continued operation of VHF booster and VHF translator television broadcasting systems, and the authorization of the use of such booster and translator television broadcasting systems in those areas of this state where such systems do not now exist.

**History:** En. Sec. 1, Ch. 26, L. 1959.

##### Title of Act

An act authorizing the Montana Public Service Commission to issue licenses for the operation and use of VHF booster television systems and VHF translator television systems within this state, providing that no person shall operate a VHF booster system or VHF translator

system within the boundaries of this state except under and in accordance with a license issued therefor, requiring that an application be made for said license, authorizing said commission to adopt rules and regulations, containing a definition of terms, providing a penalty for the unlicensed operation of such system; and providing for an effective date.

**70-402. Definitions.** For the purposes of this act, unless the context of any section requires otherwise;

(a) "VHF booster system" or "booster television system" comprises electronic apparatus designed to receive, amplify and retransmit television signals on a single VHF television channel;

(b) "VHF translator system" or "translator television system" comprises electronic apparatus designed to receive, amplify and retransmit television signals on a VHF television channel different from that received;

(c) "VHF" or "very high frequency" comprises the radio frequency range between 30,000 kc and 300 mc;

(d) "VHF channel" or "very high frequency channel" comprises the following television channels with the following transmission frequency:

Channel No.	Frequency band (Megacycles)
2	54 - 60
3	60 - 66
4	66 - 72
5	76 - 82
6	82 - 88
7	174 - 180
8	180 - 186
9	186 - 192
10	192 - 198
11	198 - 204
12	204 - 210
13	210 - 216

(e) "Person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

(f) "Commission" means the public service commission of the state of Montana, as presently constituted.

**History:** En. Sec. 2; Ch. 26, L. 1959.

**70-403. License required for operation of VHF booster or VHF translator system.** No person shall operate a VHF booster system or booster television system, or a VHF translator system or translator television system within the boundaries of this state except under and in accordance with a license issued under the authority of the Montana public service commission, upon application therefor.

**History:** En. Sec. 3, Ch. 26, L. 1959.

**70-404. Application—contents.** Such application shall be directed to said commission and shall contain information concerning the ownership and location of said system, the type of system, the VHF channel or channels being utilized and the area of estimated coverage of said system, together with such other information both technical and nontechnical which the commission by its regulations shall require. It must appear from said application that the use or operation of such system will not cause to be transmitted any energy, communication or signal from this state to any other state, territory or possession of the United States, or to any place in any foreign country or to any vessel; or that the effects of such transmission extend beyond the boundaries of this state; or when interference is caused by such use or operation with the transmission of energy, communications, or signals from within this state to any place beyond its borders, or from any place beyond the borders of this state to any place within this state, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of this state.

**History:** En. Sec. 4, Ch. 26, L. 1959.

**70-405. Issuance of license—fee—additional information.** Upon receipt of an application which conforms to the requirements of the preceding section, and all regulations of the commission adopted pursuant thereto, the commission shall forthwith issue to the applicant a license, in a form to be prescribed by the commission, which shall authorize the continued operation of said system for a period of one (1) year thereafter. The fee for such license shall be in the amount of one dollar (\$1.00) per year. In the event that such application is for the construction or operation of a VHF booster system or VHF translator system which was not on the effective date of this act in operation within the boundaries of this state, the commission may require additional information with regard to the necessity for and convenience of such system and conduct such investigations and hearings as are deemed necessary to determine whether authorization of said system should be granted.

**History:** En. Sec. 5, Ch. 26, L. 1959.

**70-406. Rules and regulations.** The commission shall have the authority to adopt such rules and regulations, not inconsistent with law as it may deem necessary to carry out the provisions of this act.

**History:** En. Sec. 6, Ch. 26, L. 1959.

**70-407. Penalty for violation of act.** Any violation of the terms of this act shall constitute a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00).

**History:** En. Sec. 7, Ch. 26, L. 1959.

**Effective Date**

Section 8 of Ch. 26, Laws 1959 provided

this act shall be effective from and after the date of its approval. Approved February 17, 1959.



## TITLE 71—PUBLIC WELFARE AND RELIEF

- Chapter 1. County poor—care of, by county commissioners, 71-101, 71-118.
2. Public welfare act part 1—to establish a state department of public welfare and county departments of public welfare, 71-202, 71-210, 71-230.
  3. Public welfare act part 2—general relief—to provide aid to the unemployed, destitute and those made destitute through lack of employment and all those in need of public assistance not eligible or otherwise cared for under other parts of this act, 71-308.
  4. Public welfare act part 3—to provide for old age assistance to aged persons in need in conformity with title 2 of the federal social security act of 1935 or as amended, 71-401, 71-405, 71-410.
  5. Public welfare act part 4—to provide for aid to needy dependent children in conformity with part 4 of the federal social security act of 1935 or as amended, 71-501, 71-502, 71-508, 71-509.
  6. Public welfare act part 5—to provide for aid to needy blind individuals in conformity with title 10 of the federal social security act of 1935 or as amended, 71-601, 71-607, 71-611.
  7. Public welfare act part 6—to provide for services for crippled children and child welfare services, in conformity with title 5, parts 2 and 3 of the federal social security act of 1935, or as amended, and transferring the powers and duties of the state bureau of child protection and the orthopedic commission to the authority and supervision of the state department of public welfare, 71-706, 71-707, 71-710.
  10. Public welfare act part 9—to provide for payments to persons having silicosis, 71-1003, 71-1004, 71-1008.
  12. Permanently and totally disabled persons in need, 71-1201, 71-1206, 71-1207.
  14. Services to the blind, 71-1401 to 71-1415.

### CHAPTER 1—COUNTY POOR—CARE OF, BY COUNTY COMMISSIONERS

Section 71-101. The board of county commissioners vested with control.  
71-118. County farm.

**71-101. (4521) The board of county commissioners vested with control.** The board of county commissioners are vested with superintendence of the poor.

**History:** Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Statutes; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 1, p. 51, L. 1876; re-en. Sec. 955, 5th Div. Rev. Stat. 1879; re-en. Sec. 1609, 5th Div. Comp. Stat. 1887; re-en. Sec. 3200, Pol. C. 1895; re-en. Sec. 2050, Rev. C. 1907; re-en. Sec. 4521, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1957.

#### Amendment

The 1957 amendment deleted the words "entire and exclusive" which appeared between the words "with" and "superintendence."

**71-103. (4523) Repealed.**

#### Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to

support of intemperate person, was repealed by Sec. 1, Ch. 74, Laws 1957.

**71-104. (4524) Repealed.**

#### Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; amd. Sec. 1,

Ch. 19, L. 1933), relating to when a person may receive relief from the county, was repealed by Sec. 1, Ch. 74, Laws 1957.

**71-105. (4524.1) Repealed.****Repeal**

This section (Sec. 2, Ch. 19, L. 1933), relating to relief being worked out by able-

bodied male, was repealed by Sec. 1, Ch. 74, Laws 1957.

**71-106. (4465.4) Support of poor and indigent persons—tax levy.****Temporary Additional Tax Levy (Laws 1959, Ch. 46)**

An act to authorize in certain instances the boards of county commissioners to levy an additional tax of not to exceed six (6) mills for the county poor funds; and providing for an effective date and a repealing clause.

Section 1. Whenever the boards of county commissioners of counties coming within the provisions of this act find that the total amount that may be derived from all other sources will be inadequate to provide the revenue necessary to meet the appropriations for expenditures to be set forth in the poor fund section of the county budget, such county commissioners shall have the power and the authority to levy, not to exceed six (6) mills, or so much thereof as may be necessary, to meet such expenditures, as an additional levy for the county poor fund after receiving a certificate authorizing them so to do, issued by the state board of equalization as in this act provided.

Section 2. On or before the second Monday in July, the boards of county commissioners of counties desiring to avail themselves of the provisions of this act shall submit a certified copy of their county poor fund budget to the state examiner and a like certified copy of such budget to the state department of public welfare. The state examiner shall examine such budget and if it is found by the state examiner that such budget is in compliance with the laws of this state and the rules and regulations of such examiner's office, he shall so certify and transmit such certified copy of the budget,

together with his certificate thereon, to the state board of equalization. The state department of public welfare shall examine such budget and if it finds the expenditures and revenues of the previous year are correct and the estimated expenditures and revenues for the current year are approximately correct, then such department shall transmit such copy, together with its certificate, to the state board of equalization.

Section 3. The state board of equalization shall, on receipt of the certified copies of such county poor fund budget containing certificates as provided in section 2 hereof, examine such documents and if such board finds that a levy as authorized in section 1, or any part thereof, in addition to all other poor fund revenues is necessary, the said board shall certify the amount of the levy to be made by the county commissioners of such county and transmit such certificates to such board of county commissioners who shall thereupon be authorized to make such levy as is authorized.

Section 4. This act shall be in full force and effect from the first day of July, 1959, to the thirtieth day of June, 1961, and not thereafter.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

Prior laws, identical in nature, were Laws 1955, Ch. 73, in force from July 1, 1955, to June 30, 1957, and Laws 1957, Ch. 36, in force from July 1, 1957, to June 30, 1959.

**Collateral References**

Reimbursement of public for financial assistance to aged persons. 29 ALR 2d 731.

**71-108. (4525) Repealed.****Repeal**

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; amd. Sec. 1, Ch. 29, L. 1909; amd. Sec. 1, Ch. 50, L.

1933; amd. Sec. 1, Ch. 131, L. 1943), relating to the care of county poor and indigent sick and infirm, was repealed by Sec. 1, Ch. 74, Laws 1957.

**71-109. (4526) Repealed.****Repeal**

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; amd. Sec. 2, Ch. 29, L. 1909; amd. Sec. 1, Ch. 45, L. 1911; amd. Sec. 2, Ch. 50, L. 1933; amd.

Sec. 2, Ch. 131, L. 1943; amd. Sec. 1, Ch. 124, L. 1949), relating to contracts for care of poor and indigent sick and infirm, was repealed by Sec. 1, Ch. 74, Laws 1957.

**71-110. (4527) Repealed.****Repeal**

This section (Ap. p. Secs. 1, 2 and 4,

pp. 457, 458, Bannack Stat.; amd. Sec. 1, Ch. 31, L. 1917; amd. Sec. 1, Ch. 55, L.

1927; amd. Sec. 3, Ch. 131, L. 1943), relating to the contract for medicines and med-

ical attendance, was repealed by Sec. 1, Ch. 74, Laws 1957.

#### 71-112. (4528) Repealed.

##### Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to

the board's rejection of any bid, was repealed by Sec. 1, Ch. 74, Laws 1957.

#### 71-115. (4531) Repealed.

##### Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458 Bannack Stat.; amd. Sec. 1, Ch. 91, L. 1931; amd. Sec. 1, Ch. 19, Ex.

L. 1933), relating to the application of persons seeking relief, was repealed by Sec. 1, Ch. 74, Laws 1957.

**71-118. (4534) County farm.** The board may purchase, improve, and keep in repair a tract of land not exceeding one hundred and sixty (160) acres, to be known as the county farm, and to erect thereon suitable buildings for the use, health, and employment of all persons as are a county charge, and the county farm, and the buildings thereon, must be under such rules and regulations as the board orders. It may also provide for the care, support, and maintenance of the sick, poor, and infirm of the county upon such farm.

**History:** Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 14, p. 55, L. 1876; re-en. Sec. 968, 5th Div. Rev. Stat. 1879; re-en. Sec. 1622, 5th Div. Comp. Stat. 1887; re-en. Sec. 3213, Pol. C. 1895; re-en. Sec. 2063, Rev. C. 1907; re-en. Sec. 4534, R. C. M. 1921; amd. Sec. 2, Ch. 73, L. 1957.

of the poor farm to county farm, substituted the word "buildings" for "work-houses" and deleted the words "and the persons who are a county charge" which appeared before the words "must be under such rules and regulations as the board orders."

##### Amendment

The 1957 amendment changed the name

##### Repealing Clause

Section 3 of Ch. 73, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### 71-119. (4535) Repealed.

##### Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.) relating to

surplus moneys in the poor fund, was repealed by Sec. 1, Ch. 74, Laws 1957.

### CHAPTER 2—PUBLIC WELFARE ACT PART 1—TO ESTABLISH A STATE DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section 71-202. Appointment of state board—creation—salary—bond.

71-210. Authority and activities of the state department.

71-230. Method of issuing assistance grants—reimbursement.

#### 71-201. Creation of department.

##### References

Cited or applied in *Anderson v. United States Civil Service Comm.*, 119 F Supp 567, 573.

#### 71-202. Appointment of state board—creation—salary—bond.

(a) to (d). \* \* \* [Subdivisions (a) to (d), same as parent volume.]

(e) Each member of the state board of public welfare shall receive fifteen dollars (\$15.00) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other ex-



penses in going to, attending and returning from meetings of the board, and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the board, but in no event shall a member's per diem payments exceed one thousand dollars (\$1,000.00) in any one (1) year. No member of the state board shall have any direct financial interest in or profit by any of the operations of the state department of public welfare or any of its agencies.

Per diem and expenses of state board members shall, upon claims being presented according to state law, be paid out of funds appropriated to the state department of public welfare.

**History:** En. Sec. 2, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 26, L. 1953; amd. Sec. 1, Ch. 117, L. 1957.

#### **Amendment**

The 1957 amendment substituted the first sentence of subd. (e) for the first two sentences of former subd. (e) which read "Members of the state board shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars (\$10.00) per diem for each day actually in attendance

at such board meetings. The per diem of such individual member of the board shall be limited to not exceed the amount of five hundred dollars (\$500.00) per year."

#### **Repealing Clause**

Section 2 of Ch. 117, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 117, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

**71-210. Authority and activities of the state department.** The state department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act. The state department shall:

(a) Administer or supervise all forms of public assistance, child protection and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) Administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;

(c) Give consultant service to private institutions providing care for the needy, indigent, handicapped or dependent adults;

(d) Develop and cooperate with other state agencies provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions and vocational guidance and training of the blind;

(e) Provide services to county governments in respect to organization and supervision of county welfare departments for efficiency and economy in the administration of public welfare functions;

(f) Prescribe and maintain minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment. Develop policies relating to educational leave of employees of the

department and prospective employees of the department; and develop policies relating to staff development needs of employees of the department. Insofar as possible such personnel shall be residents of the county;

(g) Assist and cooperate with other state and federal departments, bureaus, agencies and institutions, when so requested, by performing services in conformity with the purposes of this act.

**History:** En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957.

ents of public assistance" and in subd. (f) added the second sentence.

#### **Amendment**

The 1957 amendment in subd. (a) added the words "including the provision of medical care payments in behalf of recipi-

#### **Repealing Clause**

Section 2 of Ch. 72, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### **71-230. Method of issuing assistance grants — reimbursement.**

(a) Checks in payment of public assistance, as provided for in each part of this act, with the exception of general relief, and with the exception of old age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled payments made in behalf of such recipients for medical care shall be issued by the state department upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department and all such checks will be mailed to the individual recipient. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee and the original monthly payment shall be from the state public welfare accounts. All public assistance checks shall represent cash on demand at full par value to the recipient.

(b) On or before the twentieth of each month the state department will present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county during the month. The county department must make such reimbursement to the state department within twenty (20) days after such claim is presented.

(c) Warrants or checks shall be issued from the poor fund of the county in payment of medical care provided in behalf of eligible recipients of old age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled. The warrants or checks shall be identified to the category of assistance under which issued.

**History:** En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957.

aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled payments made in behalf of such recipients for medical care" and substituted the words "approved certificates of award and reports of changes" for "approved lists" and added subd. (c).

#### **Amendment**

The 1957 amendment in the first sentence of subd. (a) inserted the words "and with the exception of old age assistance,

CHAPTER 3—PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO  
 PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE  
 MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND  
 ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT  
 ELIGIBLE OR OTHERWISE CARED FOR UNDER  
 OTHER PARTS OF THIS ACT

Section 71-308. Medical aid and hospitalization.

**71-308. Medical aid and hospitalization.** Medical aid and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provisions for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county in full upon proper claim being made to the department of public welfare; provided, further, that in all other accident cases wherein such transients are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county for one-half of such medical aid and hospitalization paid by such county, upon proper claim being made to the department of public welfare.

The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by such board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of such medical attendance.

The board of county commissioners shall have the responsibility of making suitable arrangements to provide respectable burial for those for whom such expenses are not otherwise available.

**History:** En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957.

The 1957 amendment added the third and fourth paragraphs.

**Repealing Clauses**

Section 2 of Ch. 57, Laws 1955 and Sec. 2 of Ch. 86, Laws 1957 repealed all acts and parts of acts in conflict therewith

**Amendments**

The 1955 amendment added the proviso clause.

CHAPTER 4—PUBLIC WELFARE ACT PART 3—TO PROVIDE FOR OLD  
 AGE ASSISTANCE TO AGED PERSONS IN NEED IN CONFORMITY  
 WITH TITLE 2 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935  
 OR AS AMENDED

Section 71-401. Provision for administration.  
 71-405. County share of participation.  
 71-410. Subsequent increase of income.



**71-401. Provision for administration.** (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of old age assistance under the powers, duties and functions as prescribed in sections 71-201 to 71-232.

(b) The county department of public welfare shall be charged with the local administration and supervision of old age assistance, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.

(c) It is hereby mandatory and required that the state plan and operation of old age assistance shall be in effect in each and every county of the state and the administration and supervision of old age assistance shall be uniform throughout the several counties of the state.

(d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to old age assistance.

(e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.

(f) Definition, old age assistance as used in this part means money payments to or payments made for medical care in behalf of aged needy individuals.

**History:** En. Sec. 1, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 71, L. 1957.

**Amendment**

The 1957 amendment in subd. (e) delet-

ed the words "the federal social security board and" which appeared after the words "All rules and regulations of" and in subd. (f) inserted the words "or payments made for medical care in behalf of."

**71-405. County share of participation.** Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved old age assistance grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Such reimbursements shall be credited to the old age assistance account of the state department. The amount of approved old age assistance grants over that to which contribution is made by the federal government shall be borne solely by the state department without reimbursement by the county department. Payments for medical care in behalf of recipients of old age assistance are not subject to the above provisions.

**History:** En. Sec. 5, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 69, L. 1947; amd. Sec. 1, Ch. 155, L. 1949; amd. Sec. 18, Ch. 199, L. 1951; amd. Sec. 3, Ch. 71, L. 1957.

**Amendment**

The 1957 amendment added the last sentence.

**71-410. Subsequent increase of income.** If, at any time during the continuance of old age assistance, the recipient thereof or the husband or wife (if living together) of the recipient, becomes possessed of any property or income in excess of the amount enjoyed at the time of the granting of the assistance, it shall be the duty of the recipient immediately to notify the county department of the receipt and possession of such property or

income, and the county board may, on inquiry, either cancel the assistance or vary the amount thereof in accordance with circumstances, any excess assistance heretofore paid shall be returned to the state and the county in proportion to the amount of the assistance paid by each respectively, and be recoverable as a debt due the state and the county. Provided however, when federal law or regulations permit that any amounts in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be deemed to be additional property or income under this section.

If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

**History:** En. Sec. 9, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 46, L. 1949; amd. Sec. 1, Ch. 105, L. 1959.

**Repealing Clause**

Section 2 of Ch. 105, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment added the proviso to the first paragraph.

**CHAPTER 5—PUBLIC WELFARE ACT PART 4—TO PROVIDE FOR AID TO NEEDY DEPENDENT CHILDREN IN CONFORMITY WITH PART 4 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED**

- Section 71-501. "Dependent child" defined.  
 71-502. "Aid to dependent children" defined.  
 71-508. County share of participation.  
 71-509. Periodic reconsideration and changes in amount of assistance—appointment of guardian.

**71-501. "Dependent child" defined.** The term "dependent child" means a child under the age of eighteen (18) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

**History:** En. Subd. (a) Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957.

**Amendment**

The 1957 amendment inserted the words "nephew, niece, or first cousin."

**71-502. "Aid to dependent children" defined.** The term "aid to dependent children" means money payments with respect to or payments made for medical care in behalf of a dependent child or dependent children including money payments or payments made for medical care for

any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month.

**History:** En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 21, Ch. 199, L. 1951; amd. Sec. 5, Ch. 71, L. 1957.

**Amendment**

The 1957 amendment inserted the words "or payments made for medical care in behalf of" and the words "or payments made for medical care."

**71-508. County share of participation.** Each county department shall reimburse the state department in the amount of one-third ( $1/3$ ) of the amount paid by the state department after the share contributed by the federal government is deducted, of the approved aid to dependent children grants to persons in the county each month for that part of the grants to which contribution is made by the federal government. Each county department shall reimburse the state department in the amount of fifty per cent (50%) of such grants which are not included within the provisions of the first sentence of this section. These reimbursements shall be credited to the aid to dependent children account of the state department. Payments for medical care in behalf of recipients of aid to dependent children shall not be subject to the above provisions.

**History:** En. Sec. 7, Part 4, Ch. 82, L. 1937; amd. Sec. 18, Ch. 129, L. 1939; amd. Sec. 1, Ch. 191, L. 1945; amd. Sec. 1, Ch. 71, L. 1947; amd. Sec. 6, Ch. 71, L. 1957.

**Amendment**

The 1957 amendment added the last sentence.

**71-509. Periodic reconsideration and changes in amount of assistance—appointment of guardian.** All assistance grants made under this part shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the child's circumstances have altered sufficiently to warrant such action, provided, however, that if the county department, after investigation, finds that any recipient is not utilizing the grant adequately for the needs of the child or children or is dissipating such grant, the county department may request the county attorney to file a petition in the district court for the appointment of such recipient as guardian of the assistance grant in behalf of the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the county department not less than five (5) days before the date set for such hearing; such petition may be filed with the clerk of the district court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interests of the child or children, and all parties concerned, that such guardian be appointed, he shall order such appointment, and may require such guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such times as the court may deem advisable.

It is the intention of this act that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safe-



guarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown.

Providing however, when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.

**History:** En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 Legislature. Once by Ch. 47 and once by Ch. 152. Chapter 47 provided that the act should be in effect upon its passage and approval. It was approved February 26, 1959. Chapter 152 did not carry a specific effective date. As each act amended this section in different respects, they do not appear in conflict and the compiler has made a composite section incorporating the changes made by each amendment. See the amendment notes below for the changes made by each chapter.

#### Amendments

The 1959 amendment by Ch. 47 added all of that part of this section beginning with the proviso in the second sentence, down to the last paragraph.

The 1959 amendment by Ch. 152 added the proviso which appears as the last paragraph of this section.

#### Repealing Clauses

Section 3 of Ch. 47, Laws 1959 and Sec. 2 of Ch. 152, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 2 of Ch. 47, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 26, 1959.

### CHAPTER 6—PUBLIC WELFARE ACT PART 5—TO PROVIDE FOR AID TO NEEDY BLIND INDIVIDUALS IN CONFORMITY WITH TITLE 10 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-601. Definitions.

71-607. Investigation of applications.

71-611. County share of participation.

**71-601. Definitions.** As used in this title:

(a) "Aid to blind" (or assistance) means money payments to or payments made for medical care in behalf of blind persons in need.

(b) "Supplementary services" means services other than money payments.

(c) "Ophthalmologist" means a physician licensed to practice medicine in the state of Montana and who is actively engaged in the treatment of diseases of the human eye.

(d) "Optometrist" means a practitioner licensed to practice optometry in the state of Montana and who is actively engaged in such practice.

**History:** En. Sec. 1, Part 5, Ch. 82, L. 1937; amd. Sec. 1, Ch. 157, L. 1951; amd. Sec. 7, Ch. 71, L. 1957.

#### Amendment

The 1957 amendment inserted the words "or payments made for medical care in behalf of" in subd. (a).

**71-607. Investigation of applications.** Whenever a county public welfare department receives an application for assistance under this chapter an investigation shall be promptly made. The investigation of each

application for aid to needy blind shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application, providing however when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.

**History:** En. Sec. 6, Part 5, Ch. 82, L. 1937; amd. Sec. 4, Ch. 157, L. 1951; amd. Sec. 30, Ch. 199, L. 1951; amd. Sec. 1, Ch. 153, L. 1959.

#### Repealing Clause

Section 2 of Ch. 153, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1959 amendment added to the last section the proviso concerning Indians.

**71-611. County share of participation.** Each county department shall reimburse the state department in the amount of one-third (1/3) of approved aid to needy blind grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Such reimbursement shall be credited to the aid to needy blind account of the state department. The amount of approved aid to needy blind grants over that to which contribution is made by the federal government shall be borne solely by the state department without reimbursement by the county department. Payments for medical care in behalf of recipients of aid to needy blind shall not be subject to the above provisions.

**History:** En. Sec. 10, Part 5, Ch. 82, L. 1937; amd. Sec. 2, Ch. 69, L. 1947; amd. Sec. 2, Ch. 155, L. 1949; amd. Sec. 32, Ch. 199, L. 1951; amd. Sec. 8, Ch. 71, L. 1957.

#### Amendment

The 1957 amendment added the last sentence.

### CHAPTER 7—PUBLIC WELFARE ACT PART 6—TO PROVIDE FOR SERVICES FOR CRIPPLED CHILDREN AND CHILD WELFARE SERVICES, IN CONFORMITY WITH TITLE 5, PARTS 2 AND 3 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935, OR AS AMENDED, AND TRANSFERRING THE POWERS AND DUTIES OF THE STATE BUREAU OF CHILD PROTECTION AND THE ORTHOPEDIC COMMISSION TO THE AUTHORITY AND SUPERVISION OF THE STATE DEPARTMENT OF PUBLIC WELFARE

Section 71-706. Definitions as used in this chapter.

71-707. Organization and administration of activities.

71-710. Child rehabilitation.

**71-701 to 71-704. Repealed.****Repeal**

These sections (Secs. 1 to 4, Ch. 126, L. 1941), relating to the division of serv-

ices for crippled children, were repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

**71-705. Repealed.****Repeal**

This section (Sec. 1, Part 6, Ch. 82, L. 1937), relating to the effective date for

the transfer of the bureau of child protection, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

**71-706. Definitions as used in this chapter.** (a) Child welfare services mean: The establishing, extending and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent.

(b) Child welfare worker means: Staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the state department of public welfare.

**History:** En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment deleted former subdivision (a), for text of which see parent volume, and re-lettered the remaining subdivisions.

**71-707. Organization and administration of activities.** Child welfare services and child protection functions shall be organized under and administered and supervised by the state department of public welfare, subject to the general administration and regulations of the state department and the powers and duties thereof as established in sections 71-201 to 71-232, and providing for cooperation and exchange of services with the state board of health and vocational rehabilitation bureau of the state of Montana.

**History:** En. Sec. 3, Part 6, Ch. 82, L. 1937; amd. Sec. 26, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment deleted the words "Services for crippled children" which ap-

peared at the beginning of the section; substituted "state board of health" for "child welfare division of the board of health" and added the words "of the state of Montana."

**71-710. Child rehabilitation.** The state department shall:

(a) Enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected and delinquent children where adequate provision therefor has not been made by law; and to use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law; and cooperate for the purposes hereof with all reputable child helping and child placing agencies.

(b) Inspect, license and supervise public and private infants' homes, child caring and child placing institutions and agencies.

**History:** En. Subd. (f), (g), (h), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 9, Ch. 117, L. 1941; amd. Sec. 27, Ch. 264, L. 1955.

**Amendment**

The 1955 amendment deleted former subdivision (a), for text of which see



parent volume, and re-lettered the remaining subdivisions.

#### Repealing Clause

Section 28 of Ch. 264, Laws 1955 read "Sections 10-401 (2503), 10-402 (2504), 10-403 (2505), 10-404 (2506), 10-405 (2507), 10-406 (2508), 10-407 (2509), and 10-408 (2510), Revised Codes of Montana, 1947; and,

"Sections 54-206, 54-207, 54-208, and 54-209, Revised Codes of Montana, 1947; and,

"Sections 69-106 (2449), 69-108 (2451), 69-302, and 69-903 (2542), Revised Codes of Montana, 1947; and,

"Sections 71-701, 71-702, 71-703, 71-704, and 71-705, Revised Codes of Montana, 1947, are, and each of said sections is hereby repealed."

#### Effective Date

Section 29 of Ch. 264, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.

### CHAPTER 10—PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section 71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.

71-1004. Amounts of payments.

71-1008. Conformity with acts of federal government.

**71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.** Payments shall be made under this act to any person who:

(a) Has silicosis, as defined in section 71-1001 of the Revised Codes of Montana of 1947, which results in his total disability so as to prevent him from engaging in a gainful occupation. The term "gainful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but shall mean any person having an income from any other source exceeding one hundred fifty dollars (\$150.00) per month.

(b) Has resided in and been an inhabitant of the state of Montana for ten (10) years, or more, immediately preceding the date of the application.

(c) Has silicosis and is entitled to payments under this act, but who is not at the time of receiving a payment an inmate of a penal institution, or is not a patient or inmate of any institution for the treatment of mental diseases, or is not a patient in a medical institution as a result of having been diagnosed as having a psychosis. If the person to whom payment has been ordered to be paid is an inmate of Montana state tuberculosis sanatorium, then and in that case the payment herein provided for shall be made to his wife and children, if any.

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the workmen's compensation act of the state of Montana, which will equal the sum of sixty-five dollars (\$65.00) hereunder. If he is receiving payments under the workmen's compensation act which is less in the aggregate than sixty-five dollars (\$65.00), then he is entitled to a payment under this act of the difference between the amount received under the workmen's compensation act and sixty-five dollars (\$65.00) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L.

1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955.

#### Amendment

The 1955 amendment in subd. (a) sub-

stituted "section 71-1001 of the Revised Codes of Montana of 1947" for "this chapter" in the first sentence and inserted "but shall mean any person having an income from any other source exceeding one hundred fifty dollars (\$150.00) per month" at the end of the second sentence; in subd. (c) substituted the first sentence for one which read "Is at the time of receiving a payment under this chapter an inmate of any public medical institution, except any institution for the treatment of mental diseases or penal institution"; in subd. (d) in the first sen-

tence substituted "act" for "chapter" and "sum of sixty-five dollars (\$65.00)" for "fifty (\$50.00) dollars payment allowed" and substituted the second sentence for one which read "If he is receiving payments from either or both of these plans which is less in the aggregate than fifty (\$50.00) dollars per month, then if he is entitled to a payment under this chapter that payment shall be the difference between the amount which he is receiving under these plans and fifty (\$50.00) dollars per month."

**71-1004. Amounts of payments.** Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this part, and who has, subject to the regulations and standards of the state and county departments, been determined by the state department to be entitled to a payment under this part for silicosis, shall be granted a payment by the said state department of seventy-five dollars (\$75.00) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

**History:** Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959.

#### Amendments

The 1955 amendment inserted the words "Subject to the provisions of this act and

the deductions herein provided" at the beginning of this section and raised the amount of payment from \$60 to \$65.

The 1959 amendment raised the amount of monthly payment from \$65 to \$75.

#### Repealing Clause

Section 2 of Ch. 248, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**71-1008. Conformity with acts of federal government.** If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the public welfare department of the state of Montana is hereby authorized to administer in the state of Montana such grants in aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed sixty-five dollars (\$65.00) per month exclusive of any grants made by Congress.

**History:** Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955.

#### Amendment

The 1955 amendment raised the amount of maximum payment from \$60 to \$65.

#### Repealing Clause

Section 4 of Ch. 252, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 5 of Ch. 252, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.

## CHAPTER 12—PERMANENTLY AND TOTALLY DISABLED PERSONS IN NEED

- Section 71-1201. Provision for administration. \*  
 71-1206. County share of participation.  
 71-1207. Investigation of applications.

**71-1201. Provision for administration.** (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to the permanently and totally disabled under the powers, duties and functions as prescribed in sections 71-201 through 71-232, Revised Codes of Montana, 1947.

(b) The county departments of public welfare are hereby charged with the local administration and supervision of aid to the permanently and totally disabled subject to the powers, duties and functions prescribed for the county departments in sections 71-201 through 71-232, Revised Codes of Montana, 1947.

(c) It is hereby mandatory and required that the state plan and operation of aid to the permanently and totally disabled shall be in effect in each and every county of the state and that the administration and supervision of aid to the permanently and totally disabled shall be uniform throughout the several counties of the state.

(d) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.

(e) Aid to the permanently and totally disabled, as used in this chapter, means money payments to or payments made for medical care in behalf of needy individuals eighteen (18) years of age or over who are permanently and totally disabled.

**History:** En. Sec. 1, Ch. 160, L. 1951;  
amd. Sec. 9, Ch. 71, L. 1957.

administration and" which appeared after the words "All rules and regulations of" and in subd. (e) inserted the words "or payments made for medical care in behalf of."

#### **Amendment**

The 1957 amendment in subd. (d) deleted the words "the federal social security

**71-1206. County share of participation.** Each county department shall reimburse the state department in the amount of two-thirds (2/3) of the approved aid to the permanently and totally disabled grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Each county department shall reimburse the state department in the amount of seventy-five per cent (75%) of the portion of such grants that is not included within the provisions of the first sentence of this section. Such reimbursements shall be credited to the aid to the permanently and totally disabled account of the state department. Payments for medical care in behalf of recipients of aid to the permanently and totally disabled shall not be subject to the above provisions.

**History:** En. Sec. 6, Ch. 160, L. 1951;  
amd. Sec. 10, Ch. 71, L. 1957.

#### **Repealing Clause**

Section 11 of Ch. 71, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1957 amendment added the last sentence.

**71-1207. Investigation of applications.** Whenever the county department receives an application for aid to the permanently and totally disabled an investigation shall be promptly made. The investigation of each application for aid to the permanently and totally disabled shall be con-



ducted by a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation, the staff of the county welfare department shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. The county public welfare board shall review the determination made by the staff of the county department. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application, providing, however, when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.

**History:** En. Sec. 7, Ch. 160, L. 1951;  
amd. Sec. 1, Ch. 104, L. 1959.

pealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1959 amendment added the proviso to this section.

#### **Repealing Clause**

Section 2 of Ch. 104, Laws 1959 re-

#### **Effective Date**

Section 3 of Ch. 104, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 2, 1959.

### CHAPTER 14—SERVICES TO THE BLIND

- Section 71-1401. Definitions.  
 71-1402. Administrator.  
 71-1403. Supervisor—duties.  
 71-1404. Administration.  
 71-1405. Cooperation with federal government.  
 71-1406. Receipt and disbursement of federal funds.  
 71-1407. Gifts.  
 71-1408. Eligibility for vocational rehabilitation services.  
 71-1409. Eligibility for rehabilitation services.  
 71-1410. Maintenance not assignable.  
 71-1411. Hearings.  
 71-1412. Misuse of lists and records.  
 71-1413. Saving clause.  
 71-1414. Appropriation authorization.  
 71-1415. Short title.

**71-1401. Definitions.** As used in this act:

- (a) "State department" means the state department of public welfare.
- (b) "State board" means the state board of public welfare.
- (c) "Administrator" means the administrator of the state department of public welfare.
- (d) "Supervisor" means the supervisor of the program of services for the blind.

(e) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the supervisor to be necessary to compensate a blind individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical

and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.

(f) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the supervisor to be necessary to compensate a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks including, but not limited to, services of the type described in subsection (d) hereof.

(g) "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap including but not limited to, manual, preconditioning prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(h) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(i) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(j) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(k) "Business licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in a business.

(l) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.

(m) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees; or who has other eye conditions which render vision equally defective; or who has an eye condition which will cause blindness.

**History:** En. Sec. 1, Ch. 167, L. 1955.

#### **Title of Act**

An act relating to vocational rehabilitation and related services for the blind; establishing a plan for cooperation with

the federal government in such services; providing for administration of the program by the public welfare department; defining terms; establishing standards of eligibility; repealing conflicting acts.

**71-1402. Administrator.** The program shall be administered, under the general supervision and direction of the state department, by a super-

visor and such other staff as designated by the administrator in accordance with established personnel standards of the state department and on the basis of their education, training, experience and demonstrated ability.

**History:** En. Sec. 2, Ch. 167, L. 1955.

**71-1403. Supervisor—duties.** In carrying out his duties under this act, the supervisor:

(a) shall, with the approval of the state department, make regulations governing the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation and other services, procedures for fair hearings and such other regulations as he finds necessary to carry out the purposes of this act;

(b) shall, with the approval of the administrator establish appropriate subordinate administrative units;

(c) shall, with the approval of the state administrator, take such other action as he deems necessary or appropriate to carry out the purposes of this act.

**History:** En. Sec. 3, Ch. 167, L. 1955.

**71-1404. Administration.** Except as otherwise provided by law, the state department, shall provide the services authorized by this act to blind individuals determined by the supervisor to be eligible therefor and, in carrying out the purposes of this act the department may, among other things:

(a) cooperate with other departments, agencies and institutions, both public and private, in providing the services authorized by this act to blind individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of this act, such programs, facilities and services as may be necessary or desirable;

(b) enter into reciprocal agreements with other states to provide the services authorized by this act to residents of the states concerned;

(c) conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals.

**History:** En. Sec. 4, Ch. 167, L. 1955.

**71-1405. Cooperation with federal government.** The state department, may cooperate, pursuant to agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to the purposes of this act and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

**History:** En. Sec. 5, Ch. 167, L. 1955.

**71-1406. Receipt and disbursement of federal funds.** The state treasurer is hereby designated as the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to the purposes of this act. The state treasurer shall make disbursements from such funds and from all state funds available for



such purposes upon certification of the administrator in accord with the regulations so provided.

**History:** En. Sec. 6, Ch. 167, L. 1955.

**71-1407. Gifts.** The administrator is hereby authorized and empowered, with the approval of the state board, to accept and use gifts made unconditionally by will or otherwise for the purposes of this act. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of this act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

**History:** En. Sec. 7, Ch. 167, L. 1955.

**71-1408. Eligibility for vocational rehabilitation services.** Vocational rehabilitation services shall be provided to any blind individual (1) who, at the time of filing his application therefor, resides in the state for other than a temporary purpose, and whose vocational rehabilitation the supervisor determines, after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government; provided that, except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state department thereunder, the following vocational rehabilitation services shall be provided at public cost only to blind individuals found to require financial assistance with respect thereto:

(a) Physical restoration.

(b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary.

(c) Occupational and business licenses.

(d) Tools, equipment, initial stock and supplies, including livestock and capital advances.

(e) Training books and materials.

(f) Maintenance.

**History:** En. Sec. 8, Ch. 167, L. 1955.

**71-1409. Eligibility for rehabilitation services.** Rehabilitation services shall be provided to any blind individual (a) who, at the time of filing his application therefor resides in the state for other than a temporary purpose, (b) who the supervisor, after full investigation, determines can be assisted, through the provision of such services, to achieve a more useful and purposeful life, or (c) who is eligible therefor under the terms of an agreement with another state or with the federal government.

**History:** En. Sec. 9, Ch. 167, L. 1955.

**71-1410. Maintenance not assignable.** The right of any individual to maintenance under this act shall not be transferable or assignable at law or in equity.

**History:** En. Sec. 10, Ch. 167, L. 1955.

**71-1411. Hearings.** Any individual applying for or receiving vocational rehabilitation or any other services authorized by this act who is aggrieved by any action or inaction of the state department shall be entitled, in accordance with regulations, to a fair hearing by the state department.

**History:** En. Sec. 11, Ch. 167, L. 1955.

**71-1412. Misuse of lists and records.** It shall be unlawful, except for purposes directly connected with the administration of the programs authorized by this act, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation or any other services authorized by this act, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

**History:** En. Sec. 12, Ch. 167, L. 1955.

**71-1413. Saving clause.** The legislative assembly reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislative assembly to amend or repeal this act at any time.

**History:** En. Sec. 15, Ch. 167, L. 1955.

**71-1414. Appropriation authorization.** There are hereby authorized to be included in the appropriations for the state department such sums as may be necessary to carry out the provisions of this act.

**History:** En. Sec. 16, Ch. 167, L. 1955.

**71-1415. Short title.** This act may be cited as the "Services to the Blind Act" of Montana.

**History:** En. Sec. 17, Ch. 167, L. 1955.

#### **Separability Clause**

Section 14 of Ch. 167, Laws 1955 read "Separability. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application

of such provision to other persons or circumstances shall not be affected thereby."

#### **Repealing Clause**

Section 13 of Ch. 167, Laws 1955 repealed all other laws or parts of laws in conflict therewith.

## TITLE 72—RAILROADS

- Chapter 1. Railroads—regulation by board of railroad commissioners, 72-150, 72-164.  
6. General regulation of business of railroads, 72-668 to 72-670.

### CHAPTER 1—RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

- Section 72-150. Rules for equipment of cars, trains, engines, and health and sanitation.  
72-164. Railroad commission may order electric signal bells installed.

#### 72-101. (3779) Creation of commission.

##### Vacancy

The time limitations prescribed in section 23-809 which provides the secretary of state shall certify to the various county clerks the names of persons nominated for election not less than 45 days nor more than 90 days before the election, has no application to an election to fill a vacancy created by the resignation of a regularly elected railroad commissioner where, such commissioner defers and withholds the effective date of his resignation until but 32 days remain between such effective date and the day of the general election. *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 647.

The provisions of section 23-809, a general statute, are in conflict with the special provisions of this section, a special statute, which applies specifically and exclusively to the filling of vacancies occurring in the board of commissioners of the state of Montana. *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 646.

There can be no special election to elect the governor's appointee's successor under this section, for the result of a special election could oust the governor's appointee prior to the next general election held next after such appointee's appointment and qualification. *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 647.

The office of railroad commissioner is one that is required to be filled by the voters at the general elections held biennially, and it is only when a vacancy occurs that a temporary appointment is authorized to stop the gap and permit the board to continue to function with three members until the electors are presented with their first opportunity to select the appointee's successor which opportunity is afforded under the law at the next general election held following the occurrence of the vacancy. *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 646.

#### 72-118. (3796) Power to alter classification or rate—hearing complaint.

##### Change in Rates

Advantage, preference or discrimination standing alone is not sufficient justification for interference with intrastate rates. It is only undue or unreasonable advantage, preference or prejudice, or undue, unreasonable or unjust discrimination that justifies intervention by the interstate commerce commission. *Montana Citizens F. R. Assn. v. Board of R. R. Comrs.*, 128 M 127, 271 P 2d 1024, 1030.

##### Disparity between Interstate Rates and Intrastate Rates

The consequences of an intrastate rate increase by the state board are quite different from the standpoint of a shipper from an interstate rate increase by the interstate commerce commission. The reason for this difference is that the interstate commerce commission has the power

and authority to declare a rate unreasonable or discriminatory retroactively and to compel reparation to a shipper who has paid freight charges in excess of a reasonable rate. The state board has no such authority. Consequently, the state board should require independent proof on matters essential to warrant an increase in intrastate rates and charges and should not assume that the intrastate rate was properly related to the interstate rate prior to the change made in the latter and that to maintain this relationship the intrastate rate had to be increased exactly the same as the interstate rate. *Montana Citizens F. R. Assn. v. Board of R. R. Comrs.*, 128 M 127, 271 P 2d 1024, 1027.

The state board has no authority to grant an automatic raise in intrastate rates simply because the interstate commerce commission had granted a raise in interstate rates. The mere disparity be-



tween the interstate rates and the intrastate rates does not compel the state board to grant an increase so as to re-

move the disparity. *Montana Citizens F. R. Assn. v. Board of R. R. Comrs.*, 128 M 127, 271 P 2d 1024, 1027.

## 72-119. (3797) General powers of board.

### References

Cited or applied in *Great Northern Ry.*

*v. Board of Railroad Comrs.*, 130 M 250, 298 P 2d 1093, 1094.

## 72-123. (3801) Power to compel railroad companies to provide, etc.

### Discontinuance of Service

An order of the board that there should be no curtailment or discontinuance of passenger train service between points within the state except where authorized by commission is valid under the statute and in line with authorities that a public utility may not discontinue its service without approval of the public service commission. *Great Northern Ry. v. Board of Railroad Comrs.*, 130 M 250, 298 P 2d 1093, 1094. (Dissenting opinion, 130 M 250, 298 P 2d 1093, 1095.)

Railroad was not authorized to discontinue railway service between points within Montana without permission of the commission, although in an earlier petition

by the railroad to discontinue such service the commission had ruled it had no jurisdiction. The erroneous ruling of the board that it had no jurisdiction over proceedings to abandon the service so far as it affected intrastate transportation did not justify the railroad in removing the trains. That order was subject to review and the obligation to have that order reviewed rested on the railway company as a necessary step to procure the consent of the board for the abandonment of the train service. *Great Northern Ry. v. Board of Railroad Comrs.*, 130 M 250, 298 P 2d 1093, 1095. (Dissenting opinion, 130 M 250, 298 P 2d 1093, 1095.)

## 72-124. (3802) Attorney general as attorney for board.

### References

Cited or applied in *state ex rel. Olsen v. Public Service Commission*, 131 M 104, 308 P 2d 633, 639.

## 72-125. (3803) Court review of action of board—pleadings.

### Obligation to Review

Where the board ruled that it had no jurisdiction in acting on a railroad's petition to discontinue service, the railroad was not authorized to discontinue such service between points within the state without the consent of the commission. The order was subject to review and the obligation to have that order reviewed rested on the railway company, as a necessary step to procure the consent of the

board for the abandonment of the train service. *Great Northern Ry. v. Board of Railroad Comrs.*, 130 M 250, 298 P 2d 1093, 1095. (Dissenting opinion, 130 M 250, 298 P 2d 1093, 1095.)

### References

Cited in *Montana Citizens F. R. Assn. v. Board of R. R. Comrs.*, 128 M 127, 271 P 2d 1024, 1027.

## 72-132. (3809) Action to determine reasonableness of rates, etc.

### Appellant Review

The findings of the board are by law deemed prima facie just, reasonable and proper, and courts should ascribe to them the strength due to the judgments of a tribunal appointed by law and informed by experience. The board's conclusion is subject to review, but when supported by evidence is accepted as final. *Chicago, M., St. P. & P. R. Co. v. Board of R. R. Comrs.*, 126 M 568, 255 P 2d 346, 350.

### Requiring Continuation of Service at a Loss

Where convenience and necessity is found to exist, evidence of earnings and

losses on its various services would be material before a railroad would be heard to complain that a service is an undue burden on interstate commerce or that in rendering the service there is an unlawful taking of property without due process of law. *Chicago, M., St. P. & P. R. Co. v. Board of R. R. Comrs.*, 126 M 568, 255 P 2d 346, 352.

The fact that several trains are run at a loss, is not, standing alone, sufficient to justify the discontinuance of the trains in question. It has long been settled that a requirement that a particular service be rendered at a loss does not make a service confiscatory and thereby an unconstitu-

tional taking of property. The Constitution does not grant to a railroad company a continuing privilege of exercising its franchise and at the same time permit it

to escape from the duties incidental to it. Chicago, M., St. P. & P. R. Co v. Board of R. R. Comrs., 126 M 568, 255 P 2d 346, 351.

### 72-133. (3810) Action by shippers.

#### References

Cited in Montana Citizens F. R. Assn. v. Board of R. R. Comrs., 128 M 127, 271 P 2d 1024, 1027.

**72-150. (3827) Rules for equipment of cars, trains, engines, and health and sanitation.** The railroad commission of the state of Montana shall have full authority, after notice and hearing, to make and enforce rules and regulations providing for the installation on and equipment of trains, cars, or engines, with safety appliances, and providing for sanitation and adequate shelter as it affects the health of all railroad employees, including, but not limited to, trainmen, enginemen, yardmen, maintenance of way employees, highway crossing watchmen, clerical, platform, freight house and express employees; and shall have authority to inspect the same and enforce regulations with regard thereto, such inspection rules and regulations to be from time to time co-extensive with the requirements of, and in conformity to, the provisions of the acts of Congress, and rules and regulations of the interstate commerce commission as then effective.

**History:** En. Sec. 1, Ch. 136, L. 1909; re-en. Sec. 3827, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1959.

limited to, trainmen, enginemen, yardmen, maintenance of way employees, highway crossing watchmen, clerical, platform, freight house and express employees."

#### Amendment

The 1959 amendment inserted the words "and providing for sanitation and adequate shelter as it affects the health of all railroad employees, including, but not

#### Repealing Clause

Section 2 of Ch. 63, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### 72-155. (3832) Action to determine reasonableness of rule.

#### References

Cited or applied in Chicago, M., St. P. & P. R. Co. v. Board of R. R. Comrs., 126 M 568, 255 P 2d 346, 349.

**72-164. (3842) Railroad commission may order electric signal bells installed.** Authority is hereby given to the board of railroad commissioners of the state of Montana upon petition in writing made to it by any board of county commissioners of the state of Montana, to order railroad companies to install and maintain an electrically operated bell or other signalling device at all points in the state of Montana where the main lines, spurs, or switches of any railroad in continuous operation and use, owned or operated by them, cross any public highway now lawfully established or hereafter laid out within the state of Montana, and where the contour of the country adjacent to said crossing is such that a person approaching same along said highway cannot, at a distance of twenty-five (25) feet of said crossing, obtain an unobstructed view of said railroad track for a distance of one half ( $\frac{1}{2}$ ) mile on either side of said crossing; or where any other hazardous conditions exist which make it

advisable that electric signalling devices be installed; provided, however, all persons driving motor vehicles upon the public highways of this state, outside of corporate limits of incorporated cities or towns, where the view is obscure, or when a moving train is within sight or hearing, shall bring said vehicle to a full stop not less than ten (10) nor more than one hundred (100) feet from where said highway intersects railroad tracks within this state, before crossing the same, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

**History:** En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1957.

#### **Amendment**

The 1957 amendment inserted the words "or where any other hazardous conditions exist which make it advisable that electric signalling devices be installed."

#### **Repealing Clause**

Section 2 of Ch. 115, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 115, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

### **CHAPTER 6—GENERAL REGULATION OF BUSINESS OF RAILROADS**

Section 72-668. Track motor cars—windshield—wipers—canopy on top.  
72-669. Head and rear lights on track motor cars.  
72-670. Violation—misdemeanor.

**72-668. Track motor cars — windshield — wipers — canopy on top.** Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars with:

(1) A windshield of safety glass and a device for wiping rain, snow and other moisture therefrom; such device shall be maintained in good order, and so constructed as to be controlled by the operator of said track motor car, and

(2) Upon request of the foreman, a canopy or top of such construction as to adequately protect the occupants thereof from the rays of the sun, rain, snow, or other inclement weather.

**History:** En. Sec. 1, Ch. 109, L. 1957.

#### **Title of Act**

An act providing for installation of windshields of safety glass, windshield

wipers, a canopy or top, and electric headlights and tail lights upon track motor cars operated by railroads running through or within this state as a common carrier and providing a penalty for violation thereof.

**72-669. Head and rear lights on track motor cars.** Every person, firm or corporation, operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars used during the period from thirty (30) minutes before sunset, to thirty (30) minutes after sunrise, with an electric headlight of such construction and with sufficient candle power to be plainly visible at a distance of not less than three hundred (300) feet in advance of such track motor car, any track obstruction, land mark, warning sign, or grade crossing, and further equip such track motor car



with a red rear electric light of sufficient candle power to be plainly visible at a distance of not less than three hundred (300) feet.

History: En. Sec. 2, Ch. 109, L. 1957.

72-670. Violation—misdemeanor. Every violation of any section of this act is a misdemeanor.

History: En. Sec. 3, Ch. 109, L. 1957.

## TITLE 73—RECORDING TRANSFERS

Chapter 1. Recording transfers—release of oil, gas and mineral leases, 73-104.

### CHAPTER 1—RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES

Section 73-104. Letters patent and other federal and state documents to be recorded without acknowledgment.

**73-104. (6892) Letters patent and other federal and state documents to be recorded without acknowledgment.** Letters patent from the United States, or from the state of Montana, or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States, or the state of Montana, which evidence title to land or affect the title thereof, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost, or are beyond the control of any party deraining title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original, for title or for evidence, until the said original letters patent be recorded.

**History:** En. Sec. 1572, Civ. C. 1895; re-en. Sec. 4645, Rev. C, 1907; re-en. Sec. 6892, R. C. M. 1921; amd. Sec. 1, Ch. 148, L. 1957. Cal. Civ. C. Sec. 1160.

#### Compiler's Note

Section 2 of Ch. 148, Laws 1957 amended 25-231.

#### Amendment

The 1957 amendment inserted the words "or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States, or the state of Montana, which evidence title to land or affect the title thereof."

**73-114. (6902) Oil, gas and mineral leases, release of record of.**

#### Action for Cancellation

Lessor who intends to claim forfeiture, where development is an element, has the

duty to demand that development proceed or commence. *Braun v. Mon-O-Co Oil Corp.*, 133 M 101, 320 P 2d 366.

### CHAPTER 2—EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

**73-201. (6934) Record—to whom notice—recording copies.**

#### Reservation of Royalty

Where plaintiff, seeking to quiet title, held premises under quitclaim deed from prior owner, he took title subject to all prior recordings or conveyances concerning the land in question, including reservation of royalty appearing on face of prior conveyances. *Pluhar v. Gudeyahn* — M —, 328 P 2d 129, 132.

**73-203. (6936) Conveyances defined.**

#### Reservation of Royalty

Reservation of royalty appearing on face of prior conveyances in plaintiff's

chain of title was constructive notice to purchaser. *Pluhar v. Gudeyahn*, — M —, 328 P 2d 129, 132.

## TITLE 74—SALES AND EXCHANGE

Chapter 6. Retail installment sales, 74-601 to 74-612.

### CHAPTER 1—SALE AND AGREEMENTS FOR SALE

#### 74-101. (7581) Sale defined.

##### References

Cited or applied in *DeMers v. O'Leary*, 126 M 528, 254 P 2d 1080, 1084.

#### 74-103. (7583) Agreement for sale.

##### References

Cited or applied in *DeMers v. O'Leary*, 126 M 528, 254 P 2d 1080, 1084.

#### 74-104. (7584) Agreement to sell.

##### Operation and Effect

A seller ordinarily may not sue for the purchase price of the property until title has passed to the buyer. The actual passing of a title, as between the parties to a

contract of sale of personal property, depends upon the intention of the parties. *DeMers v. O'Leary*, 126 M 528, 254 P 2d 1080, 1084.

### CHAPTER 2—CONTRACT FOR SALE OF PERSONAL PROPERTY, WHEN VALID—FILING—SEIZURE ON DEFAULT

#### 74-203. (7593) Contract for sale of real property.

##### Memorandum

An endorsed bank check with the additional words "payment land" written on it is insufficient to constitute the written "note or memorandum" required by the statutes for it does not contain all the essentials of the agreement. *Lewis v. Peterson*, 127 M 474, 267 P 2d 127, 128.

##### Rights of Way of Necessity

There are no implied grants or reservations of rights of way of necessity in Montana. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

#### 74-207. (7597) Default of vendee—seizure and sale of property, etc.

##### Operation and Effect

Where conditional sales contract secured payment of note there could be

no recovery on the note after property was retaken. *Johnson v. Sanderson*, 132 M 451, 318 P 2d 248, 250.

### CHAPTER 3—RIGHTS AND OBLIGATIONS OF SELLER—DELIVERY AND WARRANTY

#### 74-309. (7606) Warranty defined.

##### Privity of Contract

Remote vendee, having no contractual relationship with defendant rubber boot manufacturer did not state a claim for breach of warranty where there was no

showing of privity of contract between the defendant and the remote vendee. *Larson v. United States Rubber Co.*, 163 F Supp 327, 328, 330.

#### 74-315. (7612) Manufacturer's warranty against latent defects.

##### Privity of Contract

In action for breach of warranty no recovery may be had in the absence of privity of contract between the manufac-

turer and the person seeking to enforce the warranty. *Larson v. United States Rubber Co.*, 163 F Supp 327, 328, 330.



**74-321. (7618) Warranty of provisions for domestic use.****Measure of Damages**

The applicable section governing the measure of damages when plaintiff's sheep died after eating feed sold by defendant is section 17-314 wherein defendant is liable for all damages that were foreseen, or could easily have been foreseen, as likely to result from the putting of the thing sold to the use for which it was sold. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 126 M 415, 252 P 2d 1040, 1045.

**Sale—Determination**

On a second appeal of a case where the evidence of the "sale" of sheep feed given in the second trial was the same as given in the first trial, the Supreme Court determination on the first appeal that the plaintiff's evidence was sufficient to make out a prima facie case of sale became the law of the case and binding upon the parties and the district court. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 126 M 415, 252 P 2d 1040, 1042.

**CHAPTER 4—RIGHTS AND OBLIGATIONS OF BUYER—INSPECTION AND PAYMENT****74-401. (7622) Price—when to be paid.****References**

Cited or applied in *Bennett v. Dodgson*, 129 M 228, 284 P 2d 990, 994.

**CHAPTER 6—RETAIL INSTALLMENT SALES**

- Section 74-601. Short title.  
 74-602. Definitions.  
 74-603. Licensing of sales finance companies required.  
 74-604. Denial, suspension or revocation of licenses.  
 74-605. Investigations and complaints.  
 74-606. Powers of superintendent.  
 74-607. Requirements and prohibitions as to retail installment contracts.  
 74-608. Finance charge limitation.  
 74-609. Refunds on prepayment.  
 74-610. Refinancing retail installment contract.  
 74-611. Penalties.  
 74-612. Waiver.

**74-601. Short title.** This act may be cited as the "Montana retail installment sales act."

**History:** En. Sec. 1, Ch. 282, L. 1959.

**Title of Act**

An act relating to and regulating the retail installment selling and financing of goods, including motor vehicles and services; to define terms used herein; to require the licensing of sales finance companies; to vest the administration and enforcement of this act in the office of the state superintendent of banks; to prescribe the powers, duties, authority and jurisdiction of such superintendent of banks with respect to this act; to authorize the adoption and promulgation of

rules and regulations; to prescribe and regulate the form and content of contracts covering the retail installment sale of goods and services; to regulate the inclusion of insurance in a retail installment sale; to limit the amount of the finance charge that can be made for such retail installment sales; to regulate delinquency charges and the refinancing of such retail installment sales; to require a partial refund of such charges on prepayment; to make certain acts unlawful and providing penalties for violations of this act; providing for waiver and severability.

**74-602. Definitions.** Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which,

at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom.

(b) "Services" means work, labor and services furnished in the delivery, installation, servicing, repair or improvement of goods.

(c) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.

(d) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction under a retail installment contract and not for the purpose of resale.

(e) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer under a retail installment contract.

(f) "Retail installment transaction" means a contract to sell or furnish or the sale or furnishing of goods or services by a retail seller to a retail buyer under a retail installment contract for a time sale price payable in one or more deferred installments.

(g) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state pursuant to which a buyer promises to pay in one or more deferred installments the time sale price of goods and/or services. The term includes a chattel mortgage, conditional sales contract and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(h) "Cash sale price" means the price stated in a retail installment contract for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment contract, if such sale had been a sale for cash at a cash price instead of a retail installment transaction at a time sale price. The cash sale price may include any taxes, registration, certificate of title, license and official fees, and cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing or improving the goods.

(i) "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of the retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Finance charge" means the amount, as limited by section 8 [74-608] hereof, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(l) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor and the amounts of the official fees and the finance charge.

(m) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, Morris Plan company or savings and loan association, if so engaged. The term shall not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(n) "Holder" of a retail installment contract means the retail seller of the goods or services under the contract, or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

(o) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(p) "Superintendent" means the state superintendent of banks of the state of Montana.

(q) Words in the singular include the plural, the masculine includes the feminine and the neuter, and vice versa.

(r) This act shall have no application to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by such banks or other lending institutions.

**History:** En. Sec. 2, Ch. 282, L. 1959.

**74-603. Licensing of sales finance companies required.** (a) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this act: Provided, however, that no bank, trust company or savings and loan association authorized to do business in this state shall be required to obtain a license under this act but shall comply with all of the other provisions of this act.

(b) The application for such license shall be in writing, under oath and in the form prescribed by the superintendent. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers, and such other pertinent information as the superintendent may require.

(c) The license fee for each calendar year or part thereof shall be the



sum of one hundred dollars (\$100) for each place of business of the licensee in this state.

(d) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the superintendent shall endorse the change of location of the license without charge.

(e) Upon the filing of such application, and the payment of said fee, the superintendent shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this act for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this act under any other name.

**History: En. Sec. 3, Ch. 282, L. 1959.**

**74-604. Denial, suspension or revocation of licenses.** (a) Renewal of a license originally granted under this act may be denied, or a license may be suspended or revoked by the superintendent on the following grounds: (1) Material misstatement of fact in the application for license; (2) wilful failure to comply with any provision of this act relating to retail installment contracts; (3) defrauding any retail buyer to the buyer's damage; (4) fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(b) If a licensee is a partnership, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantage accruing from said acts or otherwise ratified said acts.

(c) No license shall be denied, suspended or revoked except after hearing thereon. The superintendent shall give the licensee at least ten (10) days' written notice, in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the superintendent and shall not be effective until after thirty (30) days' written notice thereof given after such entry forwarded by registered mail to the licensee at such principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

(d) Any person, licensee, or applicant, considering himself aggrieved by an order of the superintendent may within thirty (30) days from the entry of the order complained of, apply for writ of review in accordance with the provisions of chapter 90 of Title 93 of the Revised Codes of Montana of 1947 [93-9001 to 93-9011].

**History:** En. Sec. 4, Ch. 282, L. 1959.

**74-605. Investigations and complaints.** (a) The superintendent, or his duly authorized representatives, shall have the power to make such investigations as he shall deem necessary and, to the extent necessary for this purpose, he may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts and documents.

(b) Any retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the superintendent a written complaint setting forth the details of such alleged violation and the superintendent, upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

**History:** En. Sec. 5, Ch. 282, L. 1959.

**74-606. Powers of superintendent.** (a) The superintendent shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of this act. All rules and regulations of general application shall be filed in the office of the superintendent. A copy of every such rule or regulation shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date: Provided, however, the failure of a licensee to receive a copy of such rules or regulations shall not exempt him from the duty of compliance with such rules and regulations lawfully promulgated hereunder.

(b) The superintendent shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this act. The superintendent shall have the power to administer oaths and affirmations to any person whose testimony is required.

(c) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the district court of the county in which the licensed premises are located may, upon application and proof of such refusal, make an order awarding process of subpoena or subpoena duces tecum for the witness to appear before the superintendent and to give testimony, and to produce evidence as required thereby. Upon filing such order, in the office of the clerk of the said court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.

(d) If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the superintendent may apply to the judge of the court issuing such subpoena for an attachment against such person, as for a contempt.

The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence that may be proper by a fine, not exceeding one hundred dollars (\$100), or by imprisonment in the county jail, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding to be taxed.

History: En. Sec. 6, Ch. 282, L. 1959.

74-607. Requirements and prohibitions as to retail installment contracts. (a) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such cases, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time and in such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least eight (8) point type. The contract shall contain the following notice in a size equal to at least ten (10) point bold type:

1. "Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. "You are entitled to an exact copy of the contract you sign.

3. "Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(c) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least ten (10) point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(d) The seller shall deliver to the buyer or mail to him at his address shown in the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten (10) point bold type and, if contained in the contract, shall appear directly above the buyer's signature.



(e) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the goods sold or services furnished or to be furnished, and shall clearly state and describe any collateral security taken for the buyer's obligation.

(f) The contract shall contain the following items: (1) The cash sale price of the goods or services; (2) the amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of the goods traded in; (3) the difference between items one and two; (4) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits; (5) the amount of official fees; (6) the principal balance which is the sum of items three, four and five; (7) the amount of the finance charge; (8) the total amount of the time balance stated as one sum in dollars and cents, which is the sum of items six and seven, payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

The above items need not be stated in the sequence or order set forth; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(g) The amount, if any, included for insurance, which may be purchased by the holder of the contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state where such rates are required by law to be approved by said department. All such insurance shall be written by an insurance company authorized to do business in this state and shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state. A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or holder, as well as the buyer, but such insurance shall be limited to insurance against substantial risk of loss, damage or destruction of the goods. Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer. If such insurance for which such identified charge is made insures the life, safety or health of the buyer or his interest in the goods and is purchased by the holder, the holder shall within thirty (30) days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and, if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance, or, if a certificate, a summary thereof. The seller shall not decline existing insurance written by an insurance company authorized to do business in this state and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company: Provided, however, that the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonable or arbitrarily withheld,

and further, that the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects his agent, broker or company, shall be optional with the seller.

(h) If any insurance is canceled, or the premium adjusted, any refund of the insurance premium received by the holder, shall be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.

(i) A buyer may transfer his equity in the goods at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed fifteen dollars (\$15.00).

(j) The holder may collect a delinquency charge on each installment in default for a period not less than ten (10) days in an amount not in excess of five per cent (5%) of each installment or five dollars (\$5.00), whichever is less or, in lieu thereof, interest after maturity on each such installment not exceeding the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorneys' fees not exceeding fifteen per cent (15%) of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with such delinquency.

(k) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of section 7(d) [subsec. (d)] of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed, did not contain any blank spaces except as herein provided, and of compliance with this section 7 [this section] in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract.

(l) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(m) After payment of all sums for which the buyer is obligated under a contract, and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

History: En. Sec. 7, Ch. 282, L. 1959.

74-608. Finance charge limitation. (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment transaction shall not exceed the following schedule:

(1) As to motor vehicles:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars (\$7) per one hundred dollars (\$100) per year.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the sale is made—nine dollars (\$9) per one hundred dollars (\$100) per year.

Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars (\$11) per one hundred dollars (\$100) per year.

(2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11), per one hundred dollars (\$100) per year; (ii) if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); (iii) if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000).

(b) Such finance charge shall be computed on the principal balance as determined under section 7(f) [74-607(f)] of this act on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of twenty dollars (\$20) may be charged on any retail installment transaction.

(c) When a retail installment contract provides for payment, other than in equal successive monthly installments, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

(d) Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the holder maintain dominion over the payments or the goods if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his con-



tract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

**History:** En. Sec. 8, Ch. 282, L. 1959.

**74-609. Refunds on prepayment.** Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning one (1) month after prepayment is made, bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than one dollar (\$1.00) no refund need be made.

**History:** En. Sec. 9, Ch. 282, L. 1959.

**74-610. Refinancing retail installment contract.** The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments, or defer payment or payments, or renew or restate the unpaid time balance of such contract, the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed as follows: The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to section 9 [74-609] of this act, at the rate of the finance charge specified in section 8(a) [74-608(a)] of this act and by reclassifying in the case of motor vehicles by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under section 8(b) [74-608(b)] and an acquisition cost under section 9 [74-609] shall not apply in calculating refinance charges on the contract extended, deferred, renewed or restated. If all unpaid installments are deferred for not more than two (2) months, the holder may at his election charge and collect for such deferment an amount equal to the difference between (a) the refund required for prepayment in full under section 9 [74-609] as of the scheduled due date of the first deferred installment, and (b) the refund required for prepayment in full as of one (1) month prior to said date, times the number of months in which no scheduled payment is made.

**History:** En. Sec. 10, Ch. 282, L. 1959.

**74-611. Penalties.** (a) Any person who shall knowingly violate any provision of this act or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both.

(b) Any person violating sections 7, 8, 9 or 10 [74-607 to 74-610] of this act, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract.

**History:** En. Sec. 11, Ch. 282, L. 1959.

**74-612. Waiver.** Any waiver of the provisions of this act shall be unenforceable and void.

**History:** En. Sec. 12, Ch. 282, L. 1959.

**Separability Clause**

Section 13 of Ch. 282, Laws 1959 read "Severability and constitutionality. If any provisions of this act or the application thereof to any person or circumstance is held unconstitutional, the remainder of

the act and the application of such provision to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision."

## TITLE 75—SCHOOLS

- Chapter 1. State board of education—composition, powers and duties, 75-104, 75-107.
2. Residence halls at state educational institutions, 75-201 to 75-206.
  3. Control of state educational, charitable and reformatory institutions, 75-312.
  7. Montana state college—Montana wool laboratory—agricultural experiment stations, 75-710.1 to 75-710.4, 75-732 to 75-738.
  10. Western Montana college of education, 75-1006.
  13. The public schools—superintendent of public instruction, 75-1303, 75-1320.
  15. County superintendent of schools, 75-1522, 75-1523.
  16. School trustees, 75-1630, 75-1632, 75-1632.1, 75-1633, 75-1637.
  17. Budget system, 75-1716.
  18. School districts, 75-1805, 75-1831.
  19. Clerks of school districts—school census, 75-1904.
  20. Grades and courses of study in the public schools—correspondence schools—visual teaching, 75-2006.
  22. School day, month and year—holidays—constitution, pioneer and arbor day, 75-2204.
  23. Fire drills—instruction in fire dangers and prevention and prevention of communicable diseases, 75-2301.
  24. Teachers—powers and duties—election—dismissal, 75-2401.
  25. Teachers' examinations and certificates, 75-2516, 75-2518, 75-2520, 75-2522.
  27. Teachers' retirement system, 75-2701, 75-2707, 75-2709, 75-2712.
  29. Compulsory school attendance—truant officers, 75-2901, 75-2902.
  33. School busses—requirements—drivers' qualifications—construction and operation, 75-3308, 75-3310.
  34. Transportation of pupils, 75-3403, 75-3407, 75-3412.
  36. Uniform system of free public schools—state support—schedule of contributions, 75-3612, 75-3618.
  38. Extra taxation for school purposes, 75-3804.
  39. Bonds, 75-3912, 75-3913, 75-3919, 75-3938, 75-3942.
  41. High schools—county—junior and district—joint school systems, 75-4101, 75-4103, 75-4116.
  42. High schools—county—junior and district—joint school systems continued—vocational education, 75-4230, 75-4231.
  46. High school districts—public works, 75-4601, 75-4602, 75-4609.
  50. Education classes for mentally and physically handicapped children, 75-5001 to 75-5007.
  51. Federal aid, 75-5101, 75-5102.
  52. Law enforcement academy, 75-5201 to 75-5208.

### CHAPTER 1—STATE BOARD OF EDUCATION—COMPOSITION, POWERS AND DUTIES

- Section 75-104. Officers.  
75-107. Powers and duties.

**75-104. (833) Officers.** The governor shall be the president of said board and the superintendent of public instruction shall be the secretary thereof. The state treasurer shall be the treasurer of the board. The board may also elect a chairman from the appointed members, who shall serve in the absence of the governor, and such other officers as may be necessary for the effective administration of the university system.

**History:** En. Sec. 4, p. 159, L. 1893;  
re-en. Sec. 1513, Pol. C. 1895; re-en. Sec.  
645, Rev. C. 1907; re-en. Sec. 103, Ch. 76,  
L. 1913; re-en. Sec. 833, R. C. M. 1921;  
amd. Sec. 1, Ch. 269, L. 1959.

**Amendment**  
The 1959 amendment added the last sentence to this section.



**Effective Date**

Section 2 of Ch. 269, Laws 1959 provided the act should be in effect from

and after its passage and approval. Approved March 16, 1959.

**75-107. (836) Powers and duties.** The state board of education shall have power and it shall be its duty:

1. To have general control and supervision of the Montana state university, Montana state college, Montana school of mines, Montana state normal college, eastern Montana state normal school, and northern Montana college, all being units of the university of Montana. It is the purpose of this act that the said six (6) units of our university system shall be considered for all purposes one university. The state board of education shall serve ex officio as regents of the university of Montana and shall use and adopt this style in all its dealings therewith.

2 to 11. \* \* \* [Subdivisions 2 to 11, same as parent volume.]

12. To choose and appoint a president and faculty for each of the various state institutions named herein, and to fix their compensation. The board must appoint an executive secretary of the university of Montana and fix his term of office and salary and prescribe generally his duties. Said executive secretary shall not be a member of the board. The executive secretary of the University of Montana shall serve as the secretary for the board sitting as the university regents.

13 and 14. \* \* \* [Subdivisions 13 and 14, same as parent volume.]

**History:** Ap. p. Sec. 7, p. 159, L. 1893; re-en. Sec. 1516, Pol. C. 1895; re-en. Sec. 648, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1909; amd. Sec. 106, Ch. 76, L. 1913; Subd. 7, amd. Sec. 2, Ch. 196, L. 1919; re-en. Sec. 836, R. C. M. 1921; amd. by repealing Subd. 7, Ch. 131, L. 1923; amd. Sec. 2, Ch. 158, L. 1945; amd. Sec. 1, Ch. 92, L. 1951; amd. Sec. 2, Ch. 236, L. 1953; amd. Sec. 1, Ch. 266, L. 1959.

**Actions Ex Contractu against State Board of Education**

The state board of education may be sued for a breach of contract without the consent of the state for the action. *Meens v. State Board of Education*, 127 M 515, 267 P 2d 981, 983.

**Collateral References**

Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury. 34 ALR 2d 725.

Racial segregation in schools. 38 ALR 2d 1189.

**Amendment**

The 1959 amendment added the last sentence in subd. 1 and in subd. 12.

**Effective Date**

Section 2 of Ch. 266, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 16, 1959.

## CHAPTER 2—RESIDENCE HALLS AT STATE EDUCATIONAL INSTITUTIONS

- Section 75-201.** Erection of self-financing facilities at institutions controlled by the state board of education.
- 75-202. Title to be in name of state.
- 75-203. Provisions for carrying out powers.
- 75-204. State not to become obligated for payments.
- 75-205. Use of rents and income relating to institution—where derived.
- 75-206. State funds not to be used

**75-201. (836.1) Erection of self-financing facilities at institutions controlled by the state board of education.** At state institutions of higher

education under its control the state board of education, for the good of the institution concerned from time to time, is authorized to:

(a) Acquire, erect, equip, enlarge and improve residence halls, dormitories, dining rooms or halls, refectories, commons, health service buildings, armories, gymnasiums, auditoriums or theaters, field houses, student unions, game and entertainment properties, classroom or laboratory buildings, libraries, shops, storage buildings, and livestock or other arenas, or display or exhibition areas, or pavilions.

(b) Rent the rooms in such residence halls and provide board and other services to the students, officers, guests and employees of said institutions at such rates as will insure a reasonable excess of income over operating expenses as well as provide for debt service and reserves; and provide for the collection of charges, admissions, or fees for the use of other facilities by students and other persons, which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-506 of the Revised Codes of Montana, 1947, and may be collected from any or all students;

(c) Hold the funds derived from the operation of such residence halls and other facilities and devote the same to repairs, replacements, betterments, debt service, and reserves or, so far as the same may not be obligated, to the acquisition, erection, equipping, enlarging, or improvement of additional residence halls and other facilities; and

(d) Exercise full control and complete management of such residence halls and other facilities.

**History:** En. Sec. 1, Ch. 94, L. 1929; amd. Sec. 1, Ch. 291, L. 1947; amd. Sec. 1, Ch. 168, L. 1951; amd. Sec. 1, Ch. 226, L. 1953; amd. Sec. 1, Ch. 186, L. 1955.

#### **Amendment**

The 1955 amendment from subd. (a) deleted the words "and other educational, customary, related, or incidental facilities such as, but not limited to," which appeared between the words "residence

halls" and "dormitories" and added after the words "storage buildings" the words "and livestock or other arenas, or display or exhibition areas, or pavilions"; in subd. (b) added the words "which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-506 of the Revised Codes of Montana, 1947, and may be collected from any or all students."

**75-202. (836.2) Title to be in name of state.** The title to all real estate and improvements acquired and erected under the provisions of this act shall be taken and held in the name of the state of Montana, except that title to fixtures and equipment purchased on a time or installment basis may remain in the vendor until the latter has been paid and except that title to real estate may be taken in the name of any of the governing boards of any of the state institutions of higher education subject to lease, pledge, mortgage, conveyance, or other or similar real estate or financial obligation or transaction by such board at any time to procure funds by borrowing or otherwise, or to provide security or satisfaction in whole or part for obligations incurred, for the purposes of the institution involved.

**History:** En. Sec. 2, Ch. 94, L. 1929; amd. Sec. 2, Ch. 226, L. 1953; amd. Sec. 1, Ch. 186, L. 1955.

#### **Amendment**

The 1955 amendment added the second exception clause.

**75-203. (836.3) Provisions for carrying out powers.** In carrying out the above powers, said board may:

(a) Borrow money for any purpose or purposes of this chapter, including, if deemed desirable by the state board of education, the payment of interest during construction and for one (1) year thereafter and the creation of a reserve for the payment of bond principal and interest; make purchases on a time or installment basis; refund bonds theretofore issued by the state board of education, including provision for the payment of any redemption premium thereon and any interest accruing or to accrue to the date of redemption thereof, any refunding bonds issued under the authority of this section to mature and to bear interest at such rate or rates as the state board of education shall deem to be for the best interests of the institution concerned; and combine for financing purposes any facilities mentioned in section 75-201;

(b) Pledge, issue notes, bonds, or other securities, negotiable or otherwise, secured by, otherwise obligate, or make purchases with the use of (1) the net income received from rents, board, or both in the residence halls and from other facilities, (2) receipts from student building, activity, union, and other special fees prescribed by the board, and (3) other income in the form of gifts, bequests, contributions, federal grants of funds including the proceeds or income from grants of lands or other real or personal property, receipts from athletic contests, and collections of admissions and other charges for the use of facilities;

(c) Make payments on loans or purchases from any other available income not obligated for such purposes including receipts from sales of materials, equipment, and fixtures, of such facilities or of sale of the facilities themselves other than land.

(d) Secure any bonds authorized hereunder by a trust indenture between the state board of education and any bank or trust company within or without the state of Montana; and

(e) Sell any bonds authorized hereunder in such manner and for such price as the state board of education, with the approval of the state board of examiners, shall determine.

**History:** En. Sec. 3, Ch. 94, L. 1929; amd. Sec. 2, Ch. 291, L. 1947; amd. Sec. 2, Ch. 168, L. 1951; amd. Sec. 3, Ch. 226, L. 1953; amd. Sec. 3, Ch. 186, L. 1955.

**Amendment**

The 1955 amendment substituted the present subd. (a) for one which read "(a)

Borrow money or make purchases on a time or installment basis"; in subd. (b) substituted the words "notes, bonds, or other securities, negotiable or otherwise," for the words "negotiable bonds" and added subds. (d) and (e).

**75-204. (836.4) State not to become obligated for payments.** No obligation created hereunder shall ever be or become a charge against the state of Montana, but all such obligations, including the principal and interest thereon, shall be payable solely from the sources herein stated and authorized.

**History:** En. Sec. 4, Ch. 94, L. 1929; amd. Sec. 3, Ch. 291, L. 1947; amd. Sec. 3, Ch. 168, L. 1951; amd. Sec. 4, Ch. 226, L. 1953; amd. Sec. 4, Ch. 186, L. 1955.

**Amendment**

The 1955 amendment inserted the words "the" and "thereon" in the phrase "including the principal and interest thereon."



**75-205. (836.5) Use of rents and income relating to institution—where derived.** In creating or discharging obligations under the preceding sections, the facilities at one institution shall be treated separately from the facilities at another institution; and income available at one institution shall not be used to discharge obligations created for residence halls or other facilities at another institution.

**History:** En. Sec. 5, Ch. 94, L. 1929; amd. Sec. 4, Ch. 291, L. 1947; amd. Sec. 4, Ch. 168, L. 1951; amd. Sec. 5, Ch. 226, L. 1953; amd. Sec. 5, Ch. 186, L. 1955.

#### **Amendment**

The 1955 amendment substituted the words "the facilities at one institution shall be treated separately from the facili-

ties at another institution" for the words "the residence and dining halls and related facilities at each institution shall be treated separately from other facilities at such institution" and deleted the words "for residence hall purposes and other facilities" which appeared after the words "income available."

**75-206. (836.6) State funds not to be used.** For the purposes authorized in the preceding sections no state funds appropriated by the legislative assembly for specific purposes other than those authorized in this chapter shall be used or obligated. This shall not apply however to funds derived from the sources specified in subsection (b) of section 75-203.

**History:** En. Sec. 6, Ch. 94, L. 1929; amd. Sec. 5, Ch. 291, L. 1947; amd. Sec. 5, Ch. 168, L. 1951; amd. Sec. 6, Ch. 226, L. 1953; amd. Sec. 6, Ch. 186, L. 1955.

#### **Amendment**

The 1955 amendment deleted a former last sentence which read "The net rents and income of residence halls shall not be used to discharge loans or obligations of any field house."

#### **Repealing Clause**

Section 7 of Ch. 186, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 8 of Ch. 186, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

### **CHAPTER 3—CONTROL OF STATE EDUCATIONAL, CHARITABLE AND REFORMATORY INSTITUTIONS**

Section 75-312. Budget committee.

**75-301. (841) General control of state institutions.**

#### **References**

Cited in *Meens v. State Board of Education*, 127 M 515, 267 P 2d 981, 982.

**75-302. (842) Local executive boards—creation, residence and powers.**

#### **References**

Cited in *Meens v. State Board of Education*, 127 M 515, 267 P 2d 981, 983.

**75-307. (847) Powers and duties.**

#### **Actions Ex Contractu against State Board of Education**

The state board of education may be sued for a breach of contract without the

consent of the state for the action. *Meens v. State Board of Education*, 127 M 515, 267 P 2d 981, 983.

**75-312. Budget committee.** That the state board of education shall have the power and it shall be its duty to appoint each two (2) years, a budget committee composed of four (4) members selected from the appointive members of the board, whose duties shall be to review the budget

requests presented by the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school and Montana state school for the deaf and blind, and to transmit such requests to the board together with recommendations thereon.

**History:** En. Sec. 1, Ch. 25, L. 1957.

**Title of Act**

An act empowering the board of education to appoint biennially a budget committee to review budget requests of the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school and

Montana state school for the deaf and blind; to transmit a report of such requests together with its recommendations to the board of education; and containing a repealing clause.

**Repealing Clause**

Section 2 of Ch. 25 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 7—MONTANA STATE COLLEGE—MONTANA WOOL LABORATORY—AGRICULTURAL EXPERIMENT STATIONS

Section 75-710.1. Change of name of experimental station in horticulture.

75-710.2. Function of branch experiment station—employment of assistants.

75-710.3. Authority to accept donations of land suitable for experimental purposes.

75-710.4. Authority to accept donations of money, implements, livestock, etc.

75-732. Coal utilization experiment project—purpose.

75-733. Establishment of project.

75-734. Supervision and responsibility of project—reservation to state of patents.

75-735. Purchase of sites or experimental farms—money for.

75-736. Moneys apportioned from endowment funds not to be applied towards buildings.

75-737. Approval and essentiality of sites or experimental farms.

75-738. Limitation on total amount expended for sites or experimental farms.

### 75-710.1. Change of name of experimental station in horticulture.

The name of the horticulture branch experiment station at Corvallis, established by legislative act in 1907 (chapter 146, Laws of 1907, Revised Codes of Montana, 1947, section 75-710) be, and is hereby changed to the western Montana branch experiment station of the agricultural experiment station of Montana state college, and that said western Montana branch experiment station be continued under the general supervision of the director of the agricultural experiment station.

**History:** En. Sec. 1, Ch. 30, L. 1959.

**Title of Act**

An act to change the name and broaden the authorization of the horticultural

branch experiment station; providing that the state board of education may accept real and personal property to carry out the expressed function of this act; and containing a repealing clause.

**75-710.2. Function of branch experiment station—employment of assistants.** The future function of this branch experiment station is hereby declared to conduct studies, investigations, and researches into agricultural problems of particular interest to western Montana. The director of the agricultural experiment station shall be, and is hereby authorized to employ competent assistants and such other help as may be necessary to carry on the work and to incur other necessary expenses for operation and maintenance.

**History:** En. Sec. 2, Ch. 30, L. 1959.

**75-710.3. Authority to accept donations of land suitable for experimental purposes.** The Montana state board of education is hereby authorized to accept, on behalf of the state of Montana, for the use of the western Montana branch experiment station, donation or donations of land suitable for experimental purposes, providing such land be conveyed to the state in fee simple, and be free of all incumbrances, and title to same shall be acceptable to the attorney general of Montana.

**History:** En. Sec. 3, Ch. 30, L. 1959.

**75-710.4. Authority to accept donations of money, implements, livestock, etc.** The Montana state board of education is hereby authorized to accept on behalf of the state of Montana for the use of the western Montana branch experiment station donations of money, implements, scientific equipment, building materials, livestock and supplies in the furtherance of the work of said experiment station.

**History:** En. Sec. 4, Ch. 30, L. 1959.

**Repealing Clause**

Section 5 of Ch. 30, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-732. Coal utilization experiment project—purpose.** It is the intention of the legislative assembly by this act to encourage and assist in the project for the study of commercial utilization of Montana's coal and lignite being conducted at Montana state college, to maintain and improve the present ten ton per day demonstration char plant now located at the state college, and to encourage the industrial development of Montana, and industrial utilization of Montana's natural resources; to point the way to development of the vast coal and lignite deposits now lying unutilized.

**History:** En. Sec. 1, Ch. 180, L. 1955.

**Title of Act**

An act to encourage industrial development in Montana; appropriating funds to

continue experiments and studies by the engineering experiment station for commercial utilization, classification and testing for such utilization, Montana's vast coal and lignite resources.

**75-733. Establishment of project.** There is hereby established at the Montana state college at Bozeman an experiment project for the purpose of procuring and testing samples of coal and lignite from the various coal and lignite fields throughout Montana, and for carrying out effective scientific and practical research work to the end of developing as complete and accurate a knowledge of Montana's coal and lignite; and the various processes for commercial utilization of such coal and lignite, including the continuation of present experiments in the conversion of coal and lignite into coal chemicals and chars.

**History:** En. Sec. 2, Ch. 180, L. 1955.

**75-734. Supervision and responsibility of project—reservation to state of patents.** The experimental project shall be under the supervision and direction of the engineering experiment station of Montana state college, and the director of the engineering experiment station shall have general supervision control and responsibility over the functions of the coal utilization experiment project, and is directed to keep complete records and files on the said project and to make available such records and in-



formation to the public and to private industries now developing or which may in the future seek to develop the coal and lignite resources of Montana; provided, however, there shall be reserved to the state of Montana such patent or other rights, as may be availed of, by reason of said experiment project.

**History:** En. Sec. 3, Ch. 180, L. 1955.

#### **Appropriation**

Section 4 of Ch. 180, Laws 1955 read "In order to continue present experimentation on development of commercial utilization of coal and coal by-products and to pay for repair or replacement of the equipment used in such project, salaries, materials and expenses of the said project, there is hereby appropriated out of any money in the general fund of the state of Montana not otherwise appropriated, for the fiscal year beginning July 1, 1955, and

ending June 30, 1956, the sum of twenty thousand dollars (\$20,000.00); and for the fiscal year beginning July 1, 1956, and ending June 30, 1957, the sum of twenty thousand dollars (\$20,000.00). Payments from such appropriations are to be made in the same manner as are other payments from funds appropriated to Montana state college."

#### **Repealing Clause**

Section 5 of Ch. 180, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**75-735. Purchase of sites or experimental farms—money for.** That the state board of education, acting for and on behalf of Montana state college of Bozeman, Montana, make available for the purchase of sites or experimental farms from any funds deposited in the Montana trust and legacy fund credited to the Montana state college through provisions of the Morrill Land Act of 1862 and known as the Agricultural College Morrill Permanent Fund, a sum not to exceed ten per centum (10%) of the amount of such fund in accordance with the provisions of the Morrill Act of July 2, 1862.

**History:** En. Sec. 1, Ch. 248, L. 1955.

#### **Title of Act**

An act to authorize the state board of education, on behalf of Montana state college, to use not to exceed ten per centum (10%) of the amount received under the provisions of the First Morrill Act

passed by the United States Congress July 2, 1862, from the sale or other permanent disposition of lands granted to the state for endowment of Montana state college for the purchase of needed lands for sites or experimental farms as provided in section five (5) of the Act of July 2, 1862, as amended.

**75-736. Moneys apportioned from endowment funds not to be applied towards buildings.** No portion of the moneys apportioned from the endowment funds for the purchase of sites or experimental farms shall be applied directly or indirectly to the purchase, erection, preservation or repair of any building or buildings.

**History:** En. Sec. 2, Ch. 248, L. 1955.

**75-737. Approval and essentiality of sites or experimental farms.** Any sites or experimental farms purchased in accordance with the provisions of this act must first be approved by the state board of education with the approval of the Montana state college advisory council, and be essential for the effective operation of the instructional and research programs of the Montana state college and the agricultural experiment station.

**History:** En. Sec. 3, Ch. 248, L. 1955.

**75-738. Limitation on total amount expended for sites or experimental farms.** The total amount which may be used for purchase of needed lands for sites or experimental farms under the provisions of this act

may not exceed ten per centum (10%) in the aggregate of the total amount which has now or which may accrue to the credit of the agricultural college Morrill permanent account in the Montana trust and legacy fund.

History: En. Sec. 4, Ch. 248, L. 1955.

## CHAPTER 10—WESTERN MONTANA COLLEGE OF EDUCATION

### Section 75-1006. Acceptance of public lands.

**75-1006. (929) Acceptance of public lands.** The state board of education, herein mentioned, and their successors, shall receive, in the names of western Montana college of education and eastern Montana college of education, all the benefits, of whatsoever nature, that may be derived from the distribution and selection of lands contemplated in section 17 of an act of Congress, approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," and the state board of education is hereby authorized in carrying out the provisions of chapter 2 of Title 75 of the Revised Codes of Montana, 1947, as now amended, or as hereafter amended, to pledge one-half of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other obligations issued by the board for residence halls or other facilities at western Montana college of education, and one-half of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other obligations issued by the board for residence halls or other facilities at eastern Montana college of education; provided, however, that any such pledge shall be subject to any prior pledge by the board of any such interest and income. Provided further that all pledges of income and interest funds must have the final approval of the state board of examiners.

History: En. Sec. 4, p. 180, L. 1893; re-en. Sec. 1655, Pol. C. 1895; re-en. Sec. 775, Rev. C. 1907; re-en. Sec. 929, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1957.

#### Amendment

The 1957 amendment substituted "in the names of western Montana college of education and eastern Montana college of education" for "in the name of the state normal school hereby established" and added all that portion of this section beginning after the quoted act of Congress.

#### Repealing Clause

Section 2 of Ch. 19, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 19, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 19, 1957.

## CHAPTER 11—EASTERN MONTANA COLLEGE OF EDUCATION

### 75-1103. (930.3) Control and management of school.

#### References

Cited or applied in Meens v. State

Board of Education, 127 M 515, 267 P 2d 981, 983.

## CHAPTER 13—THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 75-1303. Official staff.

75-1320. Elementary school supervisor.

**75-1303. (933) Official staff.** The superintendent of public instruction shall have the power to appoint one deputy, one high school supervisor, one rural school supervisor, one music supervisor, and such other assistants as may be required to aid in carrying out the duties of his office. Such deputy, supervisors and assistants shall perform such duties pertaining to the office as the superintendent may direct. Such music supervisor shall be qualified to perform the following duties: Supervise the teaching of music in the graded, rural and high schools of this state, and assist the teachers and faculty in said schools in establishing and carrying out a progressive music program for the benefit of all children in the public schools of the state, and perform all other duties required relating to music education in the public schools. The music supervisor must possess the following qualifications: A graduate in public school music from an accredited college or university, and said supervisor shall have had five (5) years teaching experience in public school music. The music supervisor shall perform only such duties as apply to music supervision.

For the purposes of organization of the staff and administration of the duties and services of the superintendent of public instruction, there is hereby created under the office of the superintendent of public instruction a department of public instruction, of which department the superintendent of public instruction shall be the executive and administrative head.

**History:** En. Sec. 201, Subd. 2, Ch. 76, L. 1913; amd. Sec. 4, Ch. 196, L. 1919; re-en. Sec. 933, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1937; amd. Sec. 1, Ch. 68, L. 1959.

### Amendment

The 1959 amendment made numerous changes in the first paragraph of this sec-

tion and added the second paragraph. For section prior to amendment see parent volume.

### Repealing Clause

Section 2 of Ch. 68, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-1320. Elementary school supervisor.** The state superintendent of public instruction with the approval of the state board of education shall appoint one elementary supervisor for the state, whose duty it shall be to inspect and supervise the work of the elementary schools of the state and to report from time to time such information concerning the same as the state superintendent of public instruction may require. These duties shall not be in conflict with the duties of the rural school supervisor. The elementary supervisor shall have at least the qualifications required by law for a county superintendent of schools and shall hold office for such term and at such salary as the state superintendent with the approval of the state board of education may fix. The salary and expenses of such elementary supervisor shall be paid out of moneys appropriated for the support of the state department of public instruction.

**History:** En. Sec. 1, Ch. 162, L. 1957.

### Title of Act

An act to provide for an elementary school supervisor in the state department

of public instruction; to provide for the appointment; defining his duties and qualifications; and repealing all acts and parts of acts in conflict herewith.



**Repealing Clause**

Section 2 of Ch. 162, Laws 1957 repealed

all acts and parts of acts in conflict therewith.

**CHAPTER 15—COUNTY SUPERINTENDENT OF SCHOOLS**

Section 75-1522. Abandonment of school districts.

75-1523. Census reports to be transmitted to superintendent of public instruction—penalty.

**75-1518. (966) Controversies.****References**

Cited or applied in State ex rel. Sax-

torph v. District Court, 128 M 353, 275 P 2d 209, 217.

**75-1522. (970) Abandonment of school districts.** (1) He shall attach to contiguous districts territory not a part of any district except as hereinafter provided, and he must declare a school district abandoned when a school has not been operated in the district during a period of three (3) consecutive years. The county superintendent in determining the question of abandoning any school district under this act must include any period of time that may have elapsed before the approval of this act, except that the period of abandonment for these districts which have during the school years 1958-1959 provided transportation or in lieu of transportation, payments, shall not commence until July 1, 1959; provided, however, that the county superintendent of schools shall notify each school district which has not operated a school for two (2) years, that the non-operation of a school for another year will bring about abandonment: Failure of the county superintendent to give such notification does not, however, protect the district from abandonment.

(2) The abandoned territory shall be attached to a contiguous district or districts. Whenever there are five (5) or more children in abandoned territory eligible for attendance in an elementary school as determined by the county superintendent and residing more than three (3) miles from an established school in the district to which the abandoned territory is attached, the school trustees shall provide a school in such abandoned territory when requested so to do by the parents of at least three (3) of such children. In determining whether such children reside more than three (3) miles from an established school in the district, the measurement must be by the shortest regularly traveled route. Whenever a school district is ordered abandoned and there is any indebtedness outstanding against the district represented either by registered warrants, or bonds, or both, and there is not sufficient money in the funds of the district to pay the same, all money in the funds of the district shall be set aside and applied in payment of such indebtedness, and there shall be levied annually, in the manner provided by law, a tax against all property within the boundaries of such district, as the same existed when such indebtedness was incurred, sufficient to pay such indebtedness as it matures, with all interest becoming due thereon.

(3) All funds of an abandoned district, after all the debts of the district have been paid, shall be placed in the general fund of the district or districts to which its territory is attached on order of the county superintendent. If the territory of an abandoned district is divided and a part

attached to two (2) or more districts, the funds of the abandoned district, after all its debts have been paid, shall be apportioned by the county superintendent between the districts to which such territory is attached in proportion to the assessed value of the property attached to each thereof. The school buildings, if any, in the abandoned territory, shall not be disposed of or removed unless approval for disposal or removal is given by a majority vote of the residents of the abandoned district present at a meeting in such school buildings, such meeting to be duly called by the board of trustees of the consolidated district. The county superintendent shall have power to declare a school district abandoned when there is an insufficient number of residents of said district who could qualify or when the available residents refuse to qualify in sufficient number as trustees and clerk for said district so that no legal board can be formed or a quorum obtained so that meetings of a board of trustees of such district can be held. Whenever a school district is ordered abandoned upon order of the county superintendent of schools in such case, then he shall attach said school district to a contiguous district or districts as herein provided.

**History:** En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 970, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1929; amd. Sec. 1, Ch. 84, L. 1931; amd. Sec. 1, Ch. 168, L. 1943; amd. Sec. 1, Ch. 109, L. 1951; amd. Sec. 1, Ch. 242, L. 1955; amd. Sec. 1, Ch. 121, L. 1959.

#### **Amendments**

The 1955 amendment in subd. (1) substituted "three (3) children" for "five (5) children" and in subd. (3) inserted the third sentence.

The 1959 amendment inserted in subd. (1) the clause "except that the period of abandonment for these districts which have during the school years 1958-1959 provided transportation or in lieu of transportation, payments, shall not commence until July 1, 1959" and deleted at the end of subd. (1) a proviso reading: "provided further, that if any such school district has provided transportation either by bus or by the payment to individuals, or has provided payments for board and room in lieu of transportation for an average of at least three (3) children of school age during a period of three (3) consecutive years living within the district, to another district for the purpose of attending school therein for a term of at least one hundred eighty (180) days each year, such transportation shall be deemed equivalent to the actual holding of school in such district for a term of one hundred eighty (180) days in each year, and such district shall not be ordered abandoned."

#### **Repealing Clauses**

Section 2 of Ch. 242, Laws 1955 and Sec. 2 of Ch. 121, Laws 1959 repealed

all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 242, Laws 1955 provided the act should be in effect on and after its passage and approval. Approved March 10, 1955.

#### **Collateral References**

Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

#### **Application of Section**

County superintendent of schools properly ordered abandonment of elementary school district where school had not been maintained within said district during the last three consecutive school years and an average of four or less pupils had been furnished transportation to another elementary school. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 518.

#### **Construction of Section**

Transportation is balanced against school attendance in the district and does not refer to transportation of high school students whose transportation is not provided by such district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 518.

#### **High School Pupils**

On abandonment of an elementary school district no student eligible to attend high school is deprived of the opportunity of attending school. Transportation must be provided by the high school district paid for by state and county under section 75-3414. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 518.

**75-1523. (971) Census reports to be transmitted to superintendent of public instruction—penalty.** It shall be the duty of the county superintendent of schools to transmit within thirty (30) days after he receives the school census from the district clerk, the duplicate copy of the census furnished by the clerk showing the name, sex, age, and the date of birth of each child under twenty-one (21) years of age residing in the county, together with the names of the parents or guardians of such children to the superintendent of public instruction, together with such other census reports as the latter may require. No county superintendent shall be paid his salary for the last two months of his official year until he presents to the county commissioners receipts from the superintendent of public instruction for such annual census reports.

**History:** En. Sec. 1, Ch. 17, L. 1907; Sec. 838, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 971, R. C. M. 1921; amd. Sec. 3, Ch. 118, L. 1927; amd. Sec. 1, Ch. 141, L. 1955.

#### **Amendment**

The 1955 amendment at the end of the first sentence substituted the words "superintendent of public instruction, together with such other census reports as the latter may require" for "commissioner of the bureau of labor and industry. He shall

also transmit to the superintendent of public instruction in the year 1927 a duplicate of his alphabetical card index of the school census on uniform blanks provided by the superintendent of public instruction, and every year thereafter cards for all new names shall be forwarded for insertion in the state file of the superintendent of public instruction, together with a list of eliminations of names from previous years" and deleted from the end of the last sentence the words "and index of census list."

## **CHAPTER 16—SCHOOL TRUSTEES**

**Section 75-1630. Transfer of funds.**

75-1632. Duties of trustees.

75-1632.1. Trustees of school districts annually to decide by whom audit to be made.

75-1633. Use of school rooms for adult education classes—tax levy.

75-1637. Letting contracts and furnishing supplies, trustees not to be interested in—advertising for bids required, when.

**75-1603. (987) Elections.**

#### **References**

Cited or applied in State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 999.

**75-1606. (990) Election in districts of first class—nominations, etc.**

#### **Time for Nomination**

In computing whether a nomination was made at least 40 days before the day of election, resort must be had to the legislative enactment, section 90-407, which requires that in computing time you exclude the first day and include the last day; thus where date of election was April 3, 1954 the last day for nominating meetings was

February 22. State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Pericich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

**75-1630. (1013) Transfer of funds.** Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state,



which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.
2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.
3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the school house by the shortest traveled route.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hundred twenty-five dollars (\$225.00); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred dollars (\$200.00); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be one hundred seventy-five dollars (\$175.00) per pupil.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Applications for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendent, and by the trustees of the district the pupil wishes to attend.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; provided, further, that the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

In the case of a district which does not operate a school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of pupils transferring under the provisions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

**History:** En. Sec. 507, Ch. 76, L. 1913; amd. Sec. 12, Ch. 196, L. 1919; re-en. Sec. 1013, R. C. M. 1921; amd. Sec. 1, Ch. 109, L. 1929; amd. Sec. 2, Ch. 217, L. 1939; amd. Sec. 1, Ch. 203, L. 1943; amd. Sec. 2, Ch. 207, L. 1951; amd. Sec. 1, Ch. 21, L. 1953; amd. Sec. 1, Ch. 99, L. 1959.

#### **Amendment**

The 1959 amendment deleted a former paragraph which appeared after subds. 1 to 3 which read: "For the purpose of determining the residence of such child, the place where the father resides and earns the major portion of the living for his

family, shall be used." The amendment also, in the first paragraph, after subd. (5) raised the amounts of money by \$75 in each instance.

#### Repealing Clause

Section 2 of Ch. 99, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-1632. (1015) Duties of trustees.** Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1 to 23. \* \* \* [Subdivisions 1 to 23, same as parent volume.]

24. To provide for a system of bookkeeping and annual auditing of extracurricular funds; such bookkeeping system to be recommended by the state examiner and such audit to be made by a qualified accountant or by the state examiner if so requested. If the audit is made by the state examiner, then, there shall upon completion of the audit, be paid a fee of sixty dollars (\$60.00) per day per man, into the state treasury, and the state treasurer shall accredit such payment to the special examiner's fund. A certified copy of such audit shall be filed with the county superintendent of schools, and notice of such filing and the availability of the audit to public inspection, shall be published by said superintendent in the next publication of a newspaper published within the district, or, in case there be no paper published within the district, in a newspaper published within the county, if any, and if none within the county then in the nearest newspaper published in an adjoining county and payment of such publication and audit shall be made from the extracurricular funds or from school district funds, as the board of trustees may decide.

**History:** Earlier acts governing the duties of trustees were the following: Sec. 27, p. 625, Cod. Stat. 1871; re-en. Sec. 26, p. 126, L. 1874; re-en. Sec. 1113, 5th Div. Rev. Stat. 1879; amd. Sec. 6, p. 55, L. 1883; amd. Sec. 1885, 5th Div. Comp. Stat. 1887; amd. Sec. 1797, Pol. C. 1895; amd. Sec. 5, p. 130, L. 1897; re-en. Sec. 875, Rev. C. 1907. The above section was enacted as Sec. 508, Ch. 76, L. 1913; Subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; Subd. 11 amd. by Sec. 1, Ch. 61, L. 1917, and Sec. 13, Ch. 196, L. 1919; Subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; Subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917, and by Sec. 2, Ch. 81, L. 1917; Subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; Subds. 19-20-21-22 re-en. Sec. 1, Ch. 61, L. 1917; re-en. Sec. 1015, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1923; amd. Sec. 1, Ch. 122, L. 1931; amd. Sec. 1, Ch. 165, L. 1937; amd. Sec. 1, Ch. 103, L. 1943; amd. Sec. 3, Ch. 207, L. 1951; amd. Sec. 1, Ch. 233, L. 1953; amd. Sec. 1, Ch. 228, L. 1955; amd. Sec. 1, Ch. 168, L. 1959.

#### Amendments

The 1955 amendment in the second sentence of subd. 24 deleted the words "from the extra curricular funds" which appeared before the words "a fee of thirty dollars" and in the third sentence inserted the words "notice of such filing and the availability of the audit to public inspection," "and audit" and "or from school district funds, as the board of trustees may decide."

The 1959 amendment in subd. 24 substituted "state examiner" for "state bank examiner" in three places, increased the audit fee from \$30.00 to \$60.00 per day per man, and deleted the words "together with actual transportation expenses" which followed "per day per man."

#### Repealing Clause

Section 2 of Ch. 168, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-1632.1. Trustees of school districts annually to decide by whom audit to be made.** On or before the first (1st) day of January, 1954, and annually thereafter, the board of trustees of each school district coming under the provisions of this act, shall decide whether the aforesaid audit shall be made by the state examiner or by a qualified accountant to be employed by the district, and shall cause notice of its decision to be given to the state examiner.



**History:** En. Sec. 2, Ch. 233, L. 1953; amd. Sec. 2, Ch. 228, L. 1955.

#### Compiler's Note

Although Sec. 2 of Ch. 228, Laws 1955 did not specifically amend this section, yet the subject-matter was almost identical therewith. Therefore, the compiler has given the section the same section number. The change made by the 1955 Act was the substitution of "qualified accountant" for "certified public accountant."

#### Repealing Clause

Section 3 of Ch. 228, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 4 of Ch. 228, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

**75-1633. Use of school rooms for adult education classes—tax levy.** The board of trustees of any school district or of any county high school is authorized to permit the use of school rooms for adult education, schools or classes for all adults sixteen (16) years of age or over, and if any school district is desirous of raising money to help effect the purpose of this act, the board of county commissioners may levy a tax of not to exceed one (1) mill on the dollar of all taxable property, real and personal, within the district, in addition to all other levies for school purposes, for the support and maintenance of such adult education, schools or classes, provided such schools or classes have been first approved by the state superintendent of public instruction.

**History:** En. Sec. 1, Ch. 140, L. 1937; amd. Sec. 1, Ch. 188, L. 1947; amd. Sec. 1, Ch. 146, L. 1959.

#### Amendment

The 1959 amendment, at the end of the section, substituted the proviso requiring approval by the state superintendent for provisos reading as follows: "provided that the board of school trustees of any such district requiring such levy must call an election in the manner prescribed

for such extra levies by section 75-1707, for the purpose of obtaining the approval of the district to the making of such additional levy and provided further that such election must be held before the 1st day of July."

#### Repealing Clause

Section 2 of Ch. 146, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-1637. (1016) Letting contracts and furnishing supplies, trustees not to be interested in—advertising for bids required, when.** It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. No board of trustees shall let any contract for building, furnishing, repairing, or other work, for the benefit of the district, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, except:

(a) A board of trustees of third class school districts maintaining one (1) or two (2) room elementary schools, may contract, without advertising and without bids, where the amount involved is not more than four hundred dollars (\$400.00);

(b) A board of trustees of third class school districts, other than those mentioned in subparagraph (a) may contract, without advertising

and without bids, where the amount involved is not more than seven hundred and fifty dollars (\$750.00);

(c) A board of trustees of districts of the first and second class maintaining elementary schools only, may contract without advertising and without bids where the amount involved is not more than one thousand two hundred and fifty dollars (\$1,250.00);

In all cases where advertising is required, the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids.

**History:** Ap. p. Sec. 1802, Pol. C. 1895; re-en. Sec. 882, Rev. C. 1907; amd. Sec. 1, Ch. 32, L. 1909; amd. Sec. 509, Ch. 76, L. 1913; re-en. Sec. 1016, R. C. M. 1921; amd. Sec. 1, Ch. 44, L. 1955.

#### **Amendment**

The 1955 amendment in the second sentence deleted the words "where the amount involved is two hundred and fifty

dollars, or more" which appeared between the words "district" and "without"; at the end of the same sentence after the word "work" deleted "and the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids" and inserted the word "except:" and added new subds. (a) to (c).

### **CHAPTER 17—BUDGET SYSTEM**

Section 75-1716. Emergency budgets.

#### **75-1716. (1019.16) Emergency budgets.**

(1). \* \* \* [Same as parent volume.]

(2) A copy of such resolution shall be published one (1) time in the newspaper of the district, most likely to give notice thereof to the people of the district concerned, and if there is no newspaper located in the district then publication shall be in the official newspaper of the county, a copy thereof shall be posted at the school house, or at each school house if there be more than one in the district, and at the post office, if there be one in the district, and a copy thereof shall be delivered to the county superintendent of schools and another copy delivered to the county clerk as clerk of the board of county commissioners of the county in which the school district is situated. The time designated in such notice for such meeting shall be not less than one (1) week after publication, posting and delivery of such copies of resolution. Such meeting shall be open to the public and any taxpayer in the district shall have the right to appear and be heard.

(3) and (4). \* \* \* [Subdivisions (3) and (4), same as parent volume.]

**History:** En. Sec. 16, Ch. 146, L. 1931; amd. Sec. 1, Ch. 193, L. 1943; amd. Sec. 1, Ch. 134, L. 1945; amd. Sec. 1, Ch. 124, L. 1959.

#### **Amendment**

The 1959 amendment in subd. (2) substituted the words "the newspaper of the district, most likely to give notice thereof to the people of the district concerned,

and if there is no newspaper located in the district then publication shall be in the official newspaper of the county" for "the official newspaper of the county."

#### **Repealing Clause**

Section 2 of Ch. 124, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 18—SCHOOL DISTRICTS

Section 75-1805. Creation of new districts out of other districts—change of boundaries.

75-1831. Examination of school district books—accounting methods to be prescribed—reports.

**75-1805. (1024) Creation of new districts out of other districts—change of boundaries.** (1) A new school district may be created out of portions of one (1) or more existing school districts where the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property remaining in each district from which territory is taken is not reduced below seventy-five thousand dollars (\$75,000.00) and where the number of census children between the ages of six (6) and sixteen (16) years is not reduced below fifteen (15). For the purpose of organizing a new school district out of one (1) or more existing districts, a petition in writing shall be made to the county superintendent of schools, signed by parents or guardians of at least ten (10) census children between the ages of six (6) and sixteen (16) years, residing within the boundaries of the proposed new district, and residing at a greater distance than three (3) miles from any schoolhouse owned by any one of such school districts in which a school is maintained. The petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing therein at the date of the presenting of said petition. The petition shall also show the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of the property within the proposed new district which must not be less than seventy-five thousand dollars (\$75,000.00) as shown by the last completed assessment roll. Provided, however, that said provision as to the minimum remaining taxable valuation of each district from which territory is taken shall not apply in a case where such district has at least fifty thousand (50,000) acres of nontaxable Indian land remaining within its borders and provided, further, that said provision as to the minimum taxable valuation of such proposed new district shall not apply where such proposed district contains at least fifty thousand (50,000) acres of nontaxable Indian land.

(2) The county superintendent shall within five (5) days from the receipt of such petition give notice of the hearing of said petition by posting or causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by him for consideration of said petition, in at least three (3) of the most public places in the proposed new district and one (1) on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one (1) of the most public places in each of said old districts; and shall on the day fixed in the notice proceed to hear said petition at the place designated in said notice, which must be either at the courthouse of the county or else at the schoolhouse in one of the school districts affected, unless a protest in writing signed by at least a majority of the school electors residing within such proposed school district shall be filed with the county superintendent of schools before or at the time fixed in the notice for the hearing of said petition, in which event the proposed school district shall not be created. If no such protest be filed, then the county superintendent,



upon hearing the petition, shall within ten (10) days from the date of such hearing, make an order establishing the new district and describing the boundaries thereof, or make an order denying such petition.

(3) An appeal may be taken to the board of county commissioners of the county, from either order made as aforesaid by three (3) resident taxpayers of either the old or the new district who are dissatisfied with said order. Such appeal shall be taken within thirty (30) days of the date of such order and upon the hearing of said matter by the board of county commissioners, a decision shall be rendered which shall be final. The appeals mentioned in this section shall be in writing, subscribed by the parties taking the appeal and shall recite sufficient facts to show their rights to appeal hereunder, and that it is an appeal from the decision rendered, and such an appeal shall be filed with the county superintendent within thirty (30) days from the date of the order establishing such new district or denying such petition. The county superintendent shall, within twenty (20) days from the filing of such notice of appeal transmit to the board of county commissioners, and file in the office of the county clerk, the notice of appeal and all petitions, plats, and papers in his possession pertaining to the petition for the creation of such new school district.

(4) The county clerk shall forthwith, upon receipt of such notice of appeal and other papers, give notice to all parties interested, by causing to be posted at least ten (10) days prior to the date of the next regular meeting of the board of county commissioners, in at least three (3) of the most public places in the proposed new district, and one (1) on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one (1) of the most public places in each of said old districts, notices to the effect that the board of county commissioners will, at its office in the courthouse, upon a certain date, specifying the same in such notices, which date shall be during the next regular session of the board, finally hear and determine said appeal and said petition for the creation of such new district. The boundaries of any district can be changed in the following manner, to wit:

(5) A majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in territory which is a part of any organized school district may present a petition in writing to the county superintendent of schools, asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous, provided, however, that no territory within three (3) miles of an established school in such district shall be so transferred and provided further that the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property in the district from which territory is taken shall not be reduced to less than seventy-five thousand dollars (\$75,000.00); provided, however, that this latter provision shall not apply in cases where the remaining taxable valuation of the district from which the territory is taken contains at least fifty thousand (50,000) acres of nontaxable Indian land.

(6) The petition shall describe the territory which it is proposed to transfer or include, and shall also state the reason for desiring such change, and the number of children of school age, if any, residing in the territory to be transferred or included.

(7) The county superintendent shall file said petition in his office immediately on receipt thereof, and shall give notice to the parties interested by posting notices at least ten (10) days prior to the time appointed for considering said petition, one (1) of which shall be in a public place in the territory which is proposed to be transferred or included, and one (1) on the door of each schoolhouse in each district affected by the change, or if there be no schoolhouse in such district, then in some public place in such district or districts, and at the time stated in said notice for the consideration of such petition, which shall not be less than ten (10) days nor more than thirty (30) days after the date of filing such petition, he shall proceed to hear such petition, and if he deem it advisable and for the best interest of the territory proposed to be transferred or included, he shall grant such petition and make an order fixing the boundaries of the district so changed, which order shall be final, unless an appeal be taken to the board of county commissioners of the county wherein such districts are located within thirty (30) days thereafter, and upon hearing thereof the decision of said board shall be final.

(8) All the papers, documents, and records in the case shall be certified by the county superintendent to the county commissioners for their determination of the matter on appeal; provided, that lands lying contiguous to a district and not attached to any district shall be attached to an adjacent district by the county superintendent of his own motion, and provided further, that all districts shall consist of contiguous territory.

**History:** Ap. p. Sec. 1751, Pol. C. 1895; re-en. Sec. 840, Rev. C. 1907; amd. Sec. 1, Ch. 82, L. 1911; amd. Sec. 404, Ch. 76, L. 1913; amd. Sec. 8, Ch. 196, L. 1919; re-en. Sec. 1024, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1927; amd. Sec. 1, Ch. 175, L. 1933; amd. Sec. 1, Ch. 61, L. 1943; amd. Sec. 1, Ch. 232, L. 1955; amd. Sec. 1, Ch. 163, L. 1957.

#### **Amendments**

The 1955 amendment added the last proviso clause to subd. (5).

The 1957 amendment in subd. (1) added the proviso clauses.

#### **Repealing Clauses**

Section 2 of Ch. 232, Laws 1955 and Sec. 2 of Ch. 163, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Dates**

Section 3 of Ch. 232, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

Section 3 of Ch. 163, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

**75-1831. (1039.7) Examination of school district books—accounting methods to be prescribed—reports.** It shall be the duty of the county auditor in all counties having an auditor, and the county treasurer in all counties not having an auditor, to prescribe the method of keeping the books in school districts of the third class not maintaining a high school in their respective counties, and to make an examination of the books of such third class school districts at least once every year, and whenever directed so to do by the board of county commissioners, or requested by

the board of trustees of such school districts. It shall be the duty of the clerk of districts of the third class not maintaining a high school of each of the several counties of the state to deliver to the county auditor or treasurer, as in this act provided, between the fifteenth day of June and the fifteenth day of July of each year, all books, vouchers, claims, and other papers pertaining to his office, and take a receipt therefor, and all such books, vouchers, claims and papers shall be examined by said auditor or treasurer and returned to the several clerks, not later than August fifteenth of each year.

Upon the completion of the examination provided for in this act, the auditor or treasurer, as the case may be, shall report the result of his examination by sending to the chairman of each board of trustees a written report of such examination and file a copy of each such report in the office of the county superintendent of schools.

**History:** En. Sec. 1, Ch. 34, L. 1923;  
amd. Sec. 1, Ch. 93, L. 1955.

**Amendment**

The 1955 amendment inserted the words "not maintaining a high school" both times it appears.

## CHAPTER 19—CLERKS OF SCHOOL DISTRICTS—SCHOOL CENSUS

Section 75-1904. Checking census reports—maintaining files—census of handicapped.

**75-1904. (1051.1) Checking census reports—maintaining files—census of handicapped.** It shall be the duty of the county superintendent of schools upon receipt of the report as provided in section 75-1903 to carefully examine the same and check it for errors or duplications with other census reports filed by other clerks of school districts of his county. For the purpose of assisting him in checking duplication in such reports, he shall make an alphabetical card index, classified by families, showing the names of all children on the school census, which index shall be kept current according to the census reports turned in to him each year. If the name of the same person be found upon more than one report or if the report contains names which are fictitious or names which properly belong in some other school district, he shall strike out such fictitious names and all duplicate names from all lists except that of the district in which such person was residing in good faith on the first day of October. If the county superintendent should find upon any census list the names of any persons who he believes were not residents in good faith in such district as aforesaid or which he believes are fictitious, he shall notify the clerk of the particular school district and if said clerk shall not establish the correctness of the list within fifteen (15) days after such notification, such names shall be stricken from the list. At the time of taking the annual census the clerk shall use reasonable diligence to ascertain the names of all handicapped children in the district and such information concerning the same as is required by the state superintendent of public instruction.

**History:** En. Sec. 2, Ch. 118, L. 1927;  
amd. Sec. 1, Ch. 140, L. 1955.

**Amendment**

The 1955 amendment substituted the words "kept current according to the cen-



sus reports turned in to him each year" for "prepared in duplicate and a copy thereof forwarded to the superintendent of public instruction as provided hereafter" in the second sentence and substituted "names of all handicapped children in the district and such information concerning the same as is required by the state superintendent of public instruction" for "number of blind and deaf mute persons residing in the district between the ages of five and twenty-one years with

the names and postoffice addresses of each" in the last sentence.

#### Repealing Clause

Section 2 of Ch. 140, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 140, Laws 1955 provided the act should be in effect from and after the first day of July, 1955.

### 75-1905. (1052) Report of expenditures.

#### History Correction

History: En. Sec. 4, Ch. 192, L. 1911; amd. Sec. 512, Ch. 76, L. 1913; amd. Sec.

3, Ch. 81, L. 1917; amd. Sec. 15, Ch. 196, L. 1919; re-en. Sec. 1052, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1931.

## CHAPTER 20—GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS—CORRESPONDENCE SCHOOLS—VISUAL TEACHING

Section 75-2006. State correspondence school created—fees.

**75-2006. State correspondence school created—fees.** There is hereby created a state correspondence school which shall serve the needs of (1) eighth grade graduates who because of remoteness or inability are unable to attend a regular high school, (2) students who need subjects not offered in a regular high school, (3) homebound incapacitated or isolated children who are unable to attend a regular elementary or high school, (4) non-citizens who are unable to attend established classes for preparation for citizenship, (5) inmates of the state prison. The services of this school shall be available to the above mentioned students and the inmates of the state prison at fees to be determined and set by the state superintendent of public instruction with the approval of the state board of education; provided, that in the case of isolated, homebound or incapacitated pupils for whom no regular school is provided, such fees for elementary students shall be paid by the district of residence from the general fund, and in the case of high school students from the high school transfer fund of county of residence; fees for students taking enrichment courses may either be paid by the pupil or the school attended, and adults taking citizenship preparation courses shall pay their own fees.

History: En. Sec. 1, Ch. 70, L. 1939; amd. Sec. 1, Ch. 220, L. 1951; amd. Sec. 1, Ch. 74, L. 1959.

sions making the school available for inmates of the state prison.

#### Amendment

The 1959 amendment added the provi-

#### Repealing Clause

Section 2 of Ch. 74, Laws 1959 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 22—SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—CONSTITUTION, PIONEER AND ARBOR DAY

Section 75-2204. Legal holidays—school sessions, when suspended.

**75-2204. (1062) Legal holidays — school sessions, when suspended.** No school shall be in session on the following holidays: New Year's day,

Memorial day (May 30th), Independence day (July 4th), Labor day (first Monday in September), Veterans' day (November 11th), Thanksgiving day, or Christmas day; provided, however, that in school districts where the school building must be used for election purposes, state and national election day shall be deemed a legal holiday under the provisions of this act. No school shall be dismissed on the following holidays, but appropriate exercises as a part of the day's program shall be held in each school when school is in session, on each of the said holidays, and where such holidays fall on Saturday or Sunday such exercises shall be conducted on the Friday preceding such holiday: Lincoln's Birthday (February 12th), Washington's Birthday (February 22d), Arbor day (second Tuesday of May), Flag day (June 14th), Columbus day (October 12th), Pioneer day (November 1st), and such other days as may hereafter be designated as legal holidays by the legislature or governor.

**History:** En. Sec. 1300, Ch. 76, L. 1913; amd. Sec. 2, Ch. 240, L. 1921; re-en. Sec. 1062, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1957.

and deleted "Armistice day (November 11th)" from the list of holidays when school is in session.

#### Amendment

The 1957 amendment added "Veterans' day (November 11th)" to the list of holidays when school shall not be in session

#### Repealing Clause

Section 2 of Ch. 31, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 23—FIRE DRILLS—INSTRUCTION IN FIRE DANGERS AND PREVENTION AND PREVENTION OF COMMUNICABLE DISEASES

#### Section 75-2301. Fire drills.

**75-2301. (1071) Fire drills.** In all schools of the state, either public or private, in which thirty or more children are enrolled it shall be the duty of the teacher or teachers therein employed to instruct the children under their immediate control and charge once each week during the first month of school and once each month thereafter in "fire-drill" as herein-after provided, except that additional drills may be held if deemed necessary by the teacher or school administrator.

A fire-alarm shall be given by striking a gong, and immediately upon such alarm the children shall be required to form immediately a line and leave the building in an orderly manner, through the exit and (or) exits that will most expeditiously clear the building. There shall be no certain day of the week or hour of the day for giving such alarm, and it shall be given without previous warning to the children.

It shall be the duty of the trustees or directors, or other persons having control and management of any school building of the class mentioned herein, to provide one or more gongs therefor, with such means of sounding the same as may be approved by the state fire marshal. Each member of any board of trustees or directors, or any other person whose duty it is to install said gongs as herein provided, who fails or refuses so to do, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars.

Any teacher who fails or refuses to instruct in said fire-drill in the manner provided for in this chapter, after the installation of gongs, as

above provided, shall be deemed guilty of a misdemeanor, and shall upon conviction be fined not less than five nor more than twenty-five dollars.

**History:** En. Sec. 610, Ch. 76, L. 1913; re-en. Sec. 1071, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1931; amd. Sec. 1, Ch. 24, L. 1959.

#### **Amendment**

The 1959 amendment in the first paragraph substituted "first month of school and once each month thereafter" for "school terms" and "additional drills may be held if deemed necessary by the teacher

or school administrator" for "in buildings occupied exclusively by high school students, drills may be held but twice each month."

#### **Repealing Clause**

Section 2 of Ch. 24, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### **CHAPTER 24—TEACHERS—POWERS AND DUTIES—ELECTION—DISMISSAL**

Section 75-2401. Re-election of teachers—when automatic—acceptance.

**75-2401. (1075) Re-election of teachers—when automatic—acceptance.** After the election of any teacher or principal for the fourth consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty (20) days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

**History:** En. Sec. 801, Ch. 76, L. 1913; re-en. Sec. 1075, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1927; amd. Sec. 1, Ch. 166, L. 1949; amd. Sec. 1, Ch. 26, L. 1957.

#### **Amendment**

The 1957 amendment raised the number of years after which re-election is deemed automatic from three to four.

#### **Repealing Clause**

Section 2 of Ch. 26, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 26, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 20, 1957.



**Tenure**

A teacher's tenure is a substantial, valuable and beneficial right, which cannot be taken away except for good cause. *State ex rel. Saxtorph v. District Court*, 128 M 353, 275 P 2d 209, 214.

The number of hours a teacher may teach in a day is not a factor in determining her right to tenure. *State ex rel.*

*Saxtorph v. District Court*, 128 M 353, 275 P 2d 209, 215.

**Collateral References**

Dismissal of public school teacher because of disloyalty. 27 ALR 2d 487.

Personal liability of public school principals or teachers for negligence. 32 ALR 2d 178.

**75-2411. (1085) Dismissal—appeal.****Appeals to County School Superintendent**

Writ of prohibition does not lie against the county superintendent of schools to prevent her from acting in an appeal taken to her by a teacher who had been denied re-employment by the school board since by this section appeals from such dismissals go to the county superintendent of schools. *State ex rel. Saxtorph v. District Court*, 128 M 353, 275 P 2d 209.

**Rules**

The rules, a violation of which gives the

school board the right and power to discharge are the rules referred to in the teacher's contract, viz. "rules and regulations adopted by the Board of Trustees of the district, which are made a part hereof by reference." Hence a teacher could not be discharged for violations of rules of the superintendent of the high school, which rules were not part of the "rules and regulations adopted by the Board of Trustees of the District, which are made a part" of the teacher's contract. *Hovland v. School District No. 52*, 128 M 507, 278 P 2d 211, 212.

**CHAPTER 25—TEACHERS' EXAMINATIONS AND CERTIFICATES**

- Section 75-2516. Classes of certificates for teaching.  
 75-2518. Outstanding certificates for teaching.  
 75-2520. Duration and renewal of certificates.  
 75-2522. Emergency authorization to teach.

**75-2516. Classes of certificates for teaching.** The state superintendent of public instruction may issue the following classes of certificates for teaching in accordance with the rules and regulations approved and adopted by the state board of education:

**Class 1. Professional certificate.** The professional certificate may be issued to applicants who have completed a teacher education program which includes a bachelor's degree and a minimum of one year of study beyond the degree, such degree and additional study to have been taken at a unit of the university of Montana or equivalent institution as provided by section 75-2515. The professional certificate may be endorsed for elementary and/or secondary instruction, and for specified subject fields according to the academic and professional courses offered by the applicant and in accordance with the rules and regulations established by the state board of education for such endorsement.

**Class 2. Standard certificate.** The standard certificate may be issued to applicants who have completed a four-year teacher education program and who have been awarded a bachelor's degree by a unit of the university of Montana or equivalent institution as provided by section 75-2515. The standard certificate may be endorsed for elementary and/or secondary instruction, and for specified subject fields according to the academic and professional courses offered by the applicant and in accordance with the rules and regulations established by the state board of education for such endorsement.

Class 3. Administrative and supervisory certificates. A person shall be qualified to be a superintendent of schools in any school district when he shall hold a certificate qualifying him to teach in the school or schools thereof, and in addition shall have such other qualifications with reference to special preparation and experience as the state board of education may from time to time prescribe.

A person shall be qualified to be a principal or supervisor of or in any school when he shall hold a certificate qualifying him to teach in such school, and in addition shall have such other qualifications with reference to special training and experience as the state board of education may from time to time prescribe.

When any person shall establish his qualifications to be a superintendent, principal or supervisor, as aforesaid in compliance with the rules and regulations prescribed by the state board of education, the state superintendent of public instruction may certify him as being qualified to be such superintendent, principal or supervisor, as the case may be. Contracts with principals, supervisors or superintendents shall not be valid unless such persons shall be qualified by holding the appropriate and required certificate.

Class 4. Vocational, recreational, and adult education certificates. The state superintendent of public instruction shall have authority to issue special certificates to vocational, recreational, and adult education teachers who present such qualifications of training and experience as meet the requirements of the United States office of education or the special needs of the several vocational, recreational and adult education fields, and comply with the rules and regulations approved and adopted by the state board of education.

Class 5. Provisional certificate. The provisional certificate may be issued to applicants who provide evidence satisfactory to the state board of education of intent to qualify themselves in the future for the Class 1 professional certificate or the Class 2 standard certificate, and who have completed the following minimum of academic and/or professional training at a unit of the university of Montana or equivalent institution as provided by section 75-2515:

a. For elementary endorsement. Applicants shall have completed a minimum of two years in a teacher education program.

b. For secondary endorsement. Applicants shall have completed a four-year college program or its equivalent and shall hold a bachelor's degree. The provisional certificate endorsed for secondary instruction may also be endorsed for specified subject fields according to the academic and/or professional courses offered by the applicant.

Certificates shall be endorsed in accordance with the rules and regulations established by the state board of education for such endorsement.

For purposes of evaluating the qualifications of applicants for teaching certificates, a year means that instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the university of Montana or equivalent institution.

**History:** En. Sec. 6, Ch. 142, L. 1949; amd. Sec. 1, Ch. 187, L. 1959.

#### Amendment

The 1959 amendment substituted everything after the opening paragraph for a mere listing of the types of certificates which read as follows:

- "1. Elementary school certificates.
- "2. Secondary school certificates.
- "3. Junior college certificates.

"4. Administrative and supervisory certificates.

"5. Vocational certificates.

"6. Emergency certificates."

#### Repealing Clause

Section 2 of Ch. 187, Laws 1959 read "That section 75-2517, Revised Codes of Montana, 1947, be, and the same is hereby repealed."

### 75-2517. Repealed.

#### Repeal

This section (Sec. 7, Ch. 142, L. 1949), relating to kinds of certificates for teach-

ing, was repealed by Sec. 2, Ch. 187, Laws 1959.

**75-2518. Outstanding certificates for teaching.** No provisions of this act shall affect or impair the validity of any certificate for teaching in force on July 1, 1959, or the rights and privileges of the holders by virtue thereof, save that any certificate may be suspended or revoked for any of the causes and by the procedures specified by law.

Any holder of an elementary school standard certificate issued prior to July 1, 1959, under previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the rules and regulations of the state board of education until the holder qualifies for the Class 2 standard certificate as provided in section 75-2516, as amended.

**History:** En. Sec. 7[7a], Ch. 142, L. 1949; amd. Sec. 3, Ch. 187, L. 1959.

#### Amendment

The 1959 amendment substituted "July

1, 1959" for "May 1, 1949" in the first paragraph and added the second paragraph.

**75-2520. Duration and renewal of certificates.** All certificates shall bear the date of the issue and, with the exception of the emergency authorization to teach which shall be valid for one year, and the provisional certificate which shall be valid for two years, shall expire after the first issue to any person five years from July 1 preceding such date of issue and may be renewed for periods of not more than five (5) years in accordance with rules and regulations adopted by the state board of education.

**History:** En. Sec. 9, Ch. 142, L. 1949; amd. Sec. 1, Ch. 91, L. 1951; amd. Sec. 4, Ch. 187, L. 1959.

#### Amendment

The 1959 amendment substituted "the emergency authorization to teach which shall be valid for one year, and the pro-

visional certificate which shall be valid for two years, shall expire after the first issue to any person five years from July 1 preceding such date of issue" for the words "emergency certificates which shall be valid for one year, shall expire after the first issue to any person two years from July 1 nearest such date of issue."

**75-2522. Emergency authorization to teach.** When regularly certified teachers cannot be secured, the state superintendent of public instruction may, in accordance with the rules and regulations approved and adopted by the state board of education for such emergencies, issue an emergency authorization to teach to any person who has previously held a valid certificate or who meets the standards of preparation prescribed by the state board of education for and during such emergencies. Such emergency



authorization to teach shall indicate the grades or the subjects or fields in which the holder is authorized to teach. Emergency authorizations to teach shall be valid for one year and may be renewed only in accordance with the rules and regulations approved and adopted by the state board of education.

**History:** En. Sec. 5, Ch. 187, L. 1959.

**Repealing Clause**

Section 6 of Ch. 187, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 27—TEACHERS' RETIREMENT SYSTEM**

Section 75-2701. Definitions.

75-2707. Benefits.

75-2709. Method of financing.

75-2712. Provision for discontinuing former retirement system.

**75-2701. Definitions.** The following words and phrases used in this act shall have the following meanings unless a different meaning is plainly required by the content:

(1) to (12). \* \* \* [Subdivisions (1) to (12), same as parent volume.]

(13) "Earnable compensation" shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time except that any compensation in excess of six thousand dollars (\$6,000) per annum, shall not be used for the purpose of this system provided that any teacher who received a salary or compensation in excess of five thousand dollars (\$5,000) per annum subsequent to July 1, 1957, may use such salary or that portion of it not in excess of six thousand dollars (\$6,000) as a basis of compensation for the purpose of this system if (a) he contributes five per cent (5%) of the excess of such salary subsequent to July 1, 1957, over five thousand dollars (\$5,000) and not exceeding six thousand dollars (\$6,000) to his individual account in the annuity savings fund and (b) he contributes three and one-half per cent (3½%) of the excess of his salary subsequent to July 1, 1957, over five thousand dollars (\$5,000) and less than six thousand dollars (\$6,000) to the pension accumulation fund. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

(14) "Average final compensation" shall mean the average annual compensation, pay or salary on which the five per cent (5%) contribution has been made by a member during any three (3) consecutive years as a teacher.

(15) to (22). \* \* \* [Subdivisions (15) to (22), same as parent volume.]

**History:** En. Sec. 1, Ch. 87, L. 1937; subd. (7) amd. Sec. 1, Ch. 202, L. 1939; amd. Sec. 1, Ch. 215, L. 1939; amd. Sec. 1, Ch. 137, L. 1945; amd. Sec. 1, Ch. 28, L. 1949; amd. Sec. 1, Ch. 216, L. 1953; amd. Sec. 1, Ch. 235, L. 1959.

appears; substituted \$5,000 for \$2,000 each time it appears; substituted July 1, 1957 for July 1, 1945 each time it appears and in subd. (14) substituted "three (3)" for "five."

**Amendment**

The 1959 amendment in subd. (13) substituted \$6,000 for \$5,000 each time it

**Repealing Clause**

Section 2 of Ch. 235, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-2707. Benefits.**

(1). \* \* \* [Same as parent volume.]

(2)(a) to (c). \* \* \* [Same as parent volume.]

(d) The minimum annual retirement allowance for a member who has completed thirty years service and who retired after September 1, 1937, and before June 30, 1949, shall be nine hundred dollars (\$900.00), and the minimum retirement allowance for a member who retired after September 1, 1937, and before June 30, 1949, but whose service is less than thirty years shall receive a minimum retirement allowance based on the proportionate amount of nine hundred dollars (\$900.00) that his service bears to thirty years of service.

(e) The minimum annual retirement allowance for a member who has completed thirty-five years of service and who has attained the age of sixty-five and who retires after June 30, 1949, shall be nine hundred dollars (\$900.00).

(f). \* \* \* [Subsection (f) of subdivision (2), same as parent volume.]

(3) Disability retirement benefit. Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service in the state of Montana may be retired by the retirement board not less than thirty and not more than ninety days next following the date of filing such applications on a disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

If the applicant for disability retirement was prevented because of the disability from making application at the time of the commencement of disability, the retirement board shall grant the disability retirement upon the proper application for disability retirement allowance and make payments retroactive to the thirtieth day after the date of commencement of disability.

(4) to (7). \* \* \* [Subdivisions (4) to (7), same as parent volume.]

(8) (a) A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid only the amount contributed by the member to his annuity savings account after first deducting any unpaid annual membership fees of said member.

(b) Should a member die before retirement only the amount of the member's contributions to his annuity savings fund account after deducting any unpaid annual membership fees shall be paid to his estate or such person as he shall have nominated by written designation duly executed and filed with the retirement board.

(c) In lieu of benefits provided in (b) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions.

If the beneficiary so electing be the surviving spouse of the deceased member, such beneficiary shall receive, in addition to the monthly annuity, provided the deceased member was actively engaged as a teacher in the state of Montana within one (1) year prior to his death, the sum of fifty dollars (\$50.00) per month for each child from the pension accumulation fund for the support of the minor child or children of the deceased member until such child or children reach his or their eighteenth birthday, but such payments shall not exceed in any one (1) month the sum of one hundred dollars (\$100.00).

(9). \* \* \* [Same as parent volume.]

**History:** En. Sec. 6, Ch. 87, L. 1937; amd. Sec. 2, Ch. 137, L. 1945; amd. Sec. 4, Ch. 28, L. 1949; amd. Sec. 4, Ch. 216, L. 1953; amd. Sec. 1, Ch. 160, L. 1955; amd. Sec. 1, Ch. 270, L. 1959.

graphs (d) and (e) of subd. (2) from \$600 to \$900 per year and in subd. (3) deleted the word "the" which appeared before the word "disability" at the end of the second paragraph.

#### Amendments

The 1955 amendment added the second paragraph to subd. (8)(c).

The 1959 amendment increased the minimum allowances provided for by para-

#### Repealing Clause

Section 2 of Ch. 160, Laws 1955 repealed all acts or parts of acts in conflict therewith.

**75-2709. Method of financing.** There are hereby created and established an "annuity savings fund" and "annuity reserve fund," a "pension accumulation fund," a "pension reserve fund" and an "expense fund," into which funds all of the assets of the retirement system shall be credited according to the purpose for which they are held as hereinafter prescribed.

(1) and (2). \* \* \* [Subdivisions (1) and (2), same as parent volume.]

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each and every employer shall pay into the pension accumulation fund an amount equal to three and seventy-five one hundredths per centum (3.75%) of the earnable compensation of each member employed during the whole or such part of the preceding payroll period as such member was so employed by such employer; provided, however, that no payments shall be made into said pension accumulation fund until after July 1, 1945. Provided, further, until such time as the legislative assembly shall provide adequate funds for the establishment of such reserves as are set up in this act, such parts of such act as deal with reserves to be built up by contributions from the state shall be inoperative. Provided further, that for each payroll period after July 1, 1965, the employers' contribution shall be three and fifty, one hundredths per centum (3.50%).

(b) The board of trustees of every school district maintaining an elementary school, or schools, the board of trustees of every school district maintaining a high school, and the board of trustees of every county high school shall, in the respective budgets for such schools, make and provide an appropriation for such payments to the pension accumulation fund.

(c) When the total amount required for the elementary school budget



of any district, including the amount to be paid into the pension accumulation fund will not require a levy against the property in the district in excess of ten (10) mills, no special or additional levy shall be made but the whole amount shall be paid out of the receipts from the levy authorized by section 75-3706, Revised Codes of Montana, 1947, as amended.

(d) When the total amount required for the elementary school budget for any district, including the amount to be paid into the pension accumulation fund, will require a levy more than ten (10) mills, a special levy against the taxable property in the district must be made in such number of mills as will raise the total amount for the payment to the pension accumulation fund, without being authorized at any election.

(e) The total amount to be paid by each high school within each county to the pension accumulation fund shall be raised by a county-wide tax levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that the amount budgeted for payment to the pension accumulation fund in any high school budget shall not be deemed or considered as a part of or as included within the maximums for high school budgets as fixed and determined by section 75-4505, Revised Codes of Montana, 1947, as amended, and the county-wide high school levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 75-1723, Revised Codes of Montana, 1947, as amended, unless the trustees making such budget so desire and the board of county commissioners find that such levy is not required to raise the amount necessary for such budget for all purposes including the payment to the pension accumulation fund.

(f) to (q). \* \* \* [Subsections (f) to (q) of subdivision (3), same as parent volume.]

(4) and (5). \* \* \* [Subdivisions (4) and (5), same as parent volume.]

**History:** En. Sec. 8, Ch. 87, L. 1937; amd. Secs. 2 and 3, Ch. 202, L. 1939; amd. Sec. 3, Ch. 137, L. 1945; amd. Sec. 5, Ch. 28, L. 1949; amd. Sec. 1, Ch. 239, L. 1959.

#### Amendment

The 1959 amendment increased the contribution required by the first sentence of subd. (3) (a) from 3½% to 3.75%; added the final proviso to subd. (3) (a); substituted the reference in subd. (3) (c) to

section 75-3706 for a reference to section 1203, Revised Codes of 1935; and substituted the reference in subd. (3) (e) to section 75-1723 for a reference to section 1263.11, Revised Codes of 1935.

#### Repealing Clause

Section 2 of Ch. 239, Laws 1959, repealed all acts and parts of acts in conflict therewith.

### 75-2712. Provision for discontinuing former retirement system.

(1) to (3). \* \* \* [Subdivisions (1) to (3), same as parent volume.]

(4) Any such person who having retired upon a retirement allowance under said former retirement system, shall have retired after having served as a teacher for at least twenty-five school years, fifteen of which, including the last ten years, shall have been in the schools of this state, and who shall elect under the next preceding subdivision of this section to receive his interest in said public school teachers' retirement salary fund and said public school teachers' permanent fund in the form of an annuity, shall be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance

which, together with his said annuity, shall equal the sum of nine hundred dollars (\$900.00). Any other person retired upon such allowance who shall elect to receive his interest in said funds in the form of an annuity shall, upon reaching the age of sixty years, be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance, which together with his said annuity, shall equal a sum which shall be that proportion of nine hundred dollars (\$900.00) which the number of school years which he shall have served as a teacher, and credited under the former retirement system bears to twenty-five.

(5). \* \* \* [Same as parent volume.]

**History:** En. Sec. 12, Ch. 87, L. 1937; amd. Sec. 6, Ch. 28, L. 1949; amd. Sec. 2, Ch. 270, L. 1959.

tence, clause, or part of this act is declared to be unconstitutional the remainder of this act shall not thereby be invalidated."

**Amendment**

The 1959 amendment increased the annual allowances provided for by subd. (4) from \$600 to \$900 in both cases.

**Repealing Clause**

Section 3 of Ch. 270, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Separability Clause**

Section 4 of Ch. 270, Laws 1959 read "If any section, subdivision, paragraph, sen-

**75-2715. Limitation on membership of other systems.**

**Cross-Reference**

Supplemental social security coverage for teachers, secs. 59-1109 to 59-1113.

**CHAPTER 29—COMPULSORY SCHOOL ATTENDANCE—  
TRUANT OFFICERS**

Section 75-2901. Compulsory attendance—excuses.  
75-2902. Employment of children under sixteen.

**75-2901. (1135) Compulsory attendance—excuses.** All parents, guardians, and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, language, English grammar, geography, history and civics, physiology and hygiene, and arithmetic. Every parent, guardian, or other person, having charge of any child who is seven (7) years of age prior to the beginning of the fall school term and not over sixteen (16) years of age, shall send such child to a public, private, or parochial school, in which the basic language taught is English, for the time that the school attended is in session, provided, however, that children sixteen (16) years of age or over who have successfully completed the school work of the eighth grade, or whose wages are necessary to the support of the family of such child, may be employed during the time that the public schools are in session upon making the proof and securing the age and schooling certificate provided for in the following section. School attendance shall begin within the first week of the school term, unless the child is excused from such attendance by the superintendent of the public schools, in city and other districts having such superintendent, or by the clerk of the board of trustees in districts not having such superintendent, or by the principal of the private or parochial school, upon satisfactory showing either that

the bodily or mental condition of the child does not permit of its attendance at school, or that the child in being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, to teach the branches named in this section; provided, that the county superintendent may excuse children from attendance upon such schools where, in his judgment the distance makes such attendance an undue hardship. In case the county superintendent, city superintendent, principal, or clerk refuses to excuse a child from attendance at school, an appeal may be taken from such decision to the district court of the county, upon giving a bond, within ten (10) days after such refusal, to the approval of said court, to pay all costs of the appeal; and the decision of the district court in the matter shall be final. Any parent, guardian or other person having the care or custody of a child between the ages of seven (7) and sixteen (16) years, who shall fail to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars (\$5.00) nor more than twenty dollars (\$20.00).

**History:** Ap. p. Sec. 1921, 5th Div. Comp. Stat. 1887; amd. Sec. 1920, Pol. C. 1895; amd. Sec. 1, Ch. 45, L. 1903; re-en. Sec. 965, Rev. C. 1907; amd. Sec. 1100, Ch. 76, L. 1913; amd. Sec. 1, Ch. 75, L. 1921; re-en. Sec. 1135, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1949; amd. Sec. 1, Ch. Ch. 53, L. 1955; amd. Sec. 1, Ch. 39, L. 1959.

#### Amendments

The 1955 amendment substituted "sixteen (16) years" for "fourteen years" in the first proviso clause.

The 1959 amendment substituted the phrase "who is seven (7) years of age prior to the beginning of the fall school term and not over sixteen (16) years of age" for the phrase "between the ages of eight (8) and sixteen (16) years" following the word "child" in the second sentence and substituted the word "seven (7)" for the word "eight" following the words "ages of" in the last sentence.

#### Repealing Clause

Section 2 of Ch. 39, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-2902. (1136) Employment of children under sixteen.** No child under sixteen (16) years of age shall be employed or be in the employment of any person, firm, company or corporation during the school term, and while the public schools are in session in the district in which such child lives, unless such child shall present to such persons, firm, company, or corporation an age and schooling certificate. Such certificate shall be issued by the city superintendent of schools or principal of schools, or by some person duly authorized by him, and in districts not having a city superintendent or principal, by the county superintendent of schools upon satisfactory proof that such child is of the age of sixteen (16) years or over, and has successfully completed the eighth grade as the same is designated and determined by the state board of education; provided, also, that in case the wages of any child over sixteen (16) years of age are necessary to the support of the family of such child, the city superintendent of schools, or principal of schools, or county superintendent, as the case may be, may, upon production of satisfactory evidence that the wages of such child are necessary to the support of the family, issue a certificate permitting the employment of such child, even though the said child may not have completed said eighth grade work. The age and schooling certificate shall be formulated by the superintendent of public instruction, and blank certificates shall be furnished by the clerk of the board of trustees.



Every person, firm, company, or corporation employing any child under sixteen (16) years of age shall exact the age and schooling certificate, or the certificate permitting the employment of such child, prescribed in this section, and shall, upon the request of the truant officer or other authorized person by school trustees, permit him to examine such certificates. When, however, employment of such child ceases, the employer shall promptly return to the city superintendent of schools, or principal of schools, or county superintendent of schools of such district where said child resides, the age and schooling certificate or certificate permitting the employment of such child. Any person, firm, company, or corporation employing any child contrary to the provisions of this chapter shall be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each and every offense; provided, however, that nothing in this act shall be construed to interfere with the employment of a child during the time school is not actually in session.

**History:** En. Sec. 2, Ch. 45, L. 1903; re-en. Sec. 966, Rev. C. 1907; amd. Sec. 1101, Ch. 76, L. 1913; amd. Sec. 1, Ch. 43, L. 1919; amd. Sec. 2, Ch. 75, L. 1921; re-en. Sec. 1136, R. C. M. 1921; amd. Sec. 1, Ch. 53, L. 1955.

appears in the second sentence of the first paragraph.

#### Repealing Clause

Section 2 of Ch. 53, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1955 amendment substituted "sixteen (16)" for "fourteen" both times it

### CHAPTER 33—SCHOOL BUSES—REQUIREMENTS—DRIVERS' QUALIFICATIONS—CONSTRUCTION AND OPERATION

Section 75-3308. Authority for regulating design, construction and operation of school buses.

75-3310. Meeting school bus receiving or discharging children—duty to stop—meeting on highways with separate roadways—duty of school bus driver to stop at railroad crossings.

**75-3308. Authority for regulating design, construction and operation of school buses.** (1) That the state board of education, by and with the advice of the supervisor of the Montana highway patrol and the superintendent of public instruction, shall adopt and enforce regulations not inconsistent with the motor vehicle code and the minimum standards for school buses, adopted by the national commission on safety education to govern the design, construction and operation of all school buses used for the transportation of school children when owned and operated by any school district or privately owned and operated under contract with any school district in this state and such regulations shall by reference be made a part of any such contract with a school district.

(2) Every school district, its officers and employees, and every person employed under contract by a school district shall be subject to such regulations.

(3) These regulations shall include provisions that no person shall drive or operate, or be employed or permitted to drive or operate, any school bus who has not received and filed with the county superintendent of schools a certificate from the board of trustees of the school district for

which the school bus is to be driven or operated, certifying the following:

- a. That he is at least nineteen (19) years of age.
- b. That he is of good moral character.
- c. That he is the holder of a chauffeur's license.
- d. That he has filed with the board of trustees a satisfactory physical examination signed by a licensed physician in the state of Montana on a blank provided by the state board of education.

(4) The term "approved school bus" shall mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated and under contract for transportation of children to or from school.

(5) Every approved school bus used for the transportation of school children shall bear upon the front and rear thereon a plainly visible sign containing the words "school bus" in letters not less than eight (8) inches in height. When a school bus is being operated upon a highway for purposes other than actual transportation of children either to or from school or for school functions, all markings thereon indicating "school bus" shall be covered or concealed.

(6) The Montana state board of education is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school busses, consistent with the provisions of this act, but supplemental thereto; except that such standards and specifications may designate and permit the use of flashing warning lights on school busses for the purpose of indicating when children are boarding or alighting from any said bus. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.

It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

**History:** En. Sec. 1, Ch. 183, L. 1947;      **Amendment**  
amd. Sec. 1, Ch. 172, L. 1955.

The 1955 amendment divided this section into subdivisions and added subd. (3).

**75-3310. Meeting school bus receiving or discharging children—duty to stop—meeting on highways with separate roadways—duty of school bus driver to stop at railroad crossings.** The driver of a vehicle, when approaching the front or rear of a school bus that has come to a stop on a highway outside the limits of an incorporated city or town, and is receiving or discharging school children, shall stop such vehicle not less than ten (10) feet from such school bus and keep said vehicle stationary until such children have entered such school bus or have alighted and reached the side of the highway on which they live, and the school bus has resumed motion, or the driver has signalled traffic to proceed.

The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway, or when upon a controlled access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

The driver of any school bus carrying any school child, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet, but not less than fifteen (15) feet, from the nearest rail of such railroad and while so stopped shall open door and shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

**History:** En. Sec. 1, Ch. 61, L. 1953; amd. Sec. 2, Ch. 172, L. 1955.

to proceed" and added the second, third and fourth paragraphs.

#### **Amendment**

The 1955 amendment deleted from the first paragraph the words "nearest adjacent" which appeared between the words "the" and "side" and added at the end of the first paragraph the words "on which they live, and the school bus has resumed motion, or the driver has signalled traffic

#### **Repealing Clause**

Section 3 of Ch. 172, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Cross-Reference**

For other school bus regulations see secs. 32-2198, 32-2199.

### **CHAPTER 34—TRANSPORTATION OF PUPILS**

Section 75-3403. School board may operate busses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement busses and two-way radios for school bus or busses.

75-3407. Schedule for paying for individual and bus transportation, rent or board in lieu of bus transportation provided by the district.

75-3412. Transportation matters in controversy—settlement—county transportation committees.

**75-3403.** School board may operate busses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement busses and two-way radios for school bus or busses. The board of trustees shall have the power to purchase, or rent and provide for the upkeep, care, operation, maintenance, insurance, for two-way radios and for school busses; or to contract and pay for the transportation of eligible pupils, such contracts to run for terms not to exceed five (5) years; and provided further, that each district owning a school bus or busses may levy a sufficient number of mills to create a reserve of not to exceed twelve and one-half per cent (12½%) per year of the original cost of the bus or busses for which the reserve is created; said fund to be kept separate and apart from all other funds, and to be used only for the purchase of the bus or busses needed to replace the bus or busses and two-way radios for which said reserve was created, unless authorized by a majority of the votes cast by the qualified electors of the district at an election called for that purpose. Provided, however, that school district trustees may authorize as standard equipment, the installation of two-way radios in a school bus or busses operating in school districts where



weather and road conditions may constitute a hazard to the safety of the school pupil passengers. The two-way radios may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county, with their permission and the permission of the federal communications commission wherein said school bus or busses operate, or any frequency assigned for such operation by the commission.

**History:** En. Sec. 3, Ch. 152, L. 1941; amd. Sec. 1, Ch. 163, L. 1951; amd. Sec. 1, Ch. 52, L. 1955; amd. Sec. 1, Ch. 202, L. 1957.

#### Amendments

The 1955 amendment increased the term of contract from three years to five years.

The 1957 amendment inserted the words "maintenance, insurance, for two-way radios and for" and the words "and two-way radios" and added the "provided, however" clause.

#### Repealing Clauses

Section 2 of Ch. 52, Laws 1955 and Sec. 2 of Ch. 202, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 3 of Ch. 52, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 26, 1955.

Section 3 of Ch. 202, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

### 75-3404. School boards may close schools and transport pupils, etc.

#### Operation and Effect

In lieu of maintaining a school, district may transport children of school age within the district to schools in other

districts, paying the necessary or required tuition. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 517.

**75-3407. Schedule for paying for individual and bus transportation, rent or board in lieu of bus transportation provided by the district.** The board of trustees may pay to the parents or legally appointed guardian of each child, eligible to transportation under this act, board or rent or provide transportation for the child, the amount called for under the following schedule in lieu of furnishing bus transportation:

(a) to (g). \* \* \* [Subdivisions (a) to (g), same as parent volume.]

(h) In isolated cases where due to isolation pupils must live away from home to attend school or due to excessive distances, impassable roads or special circumstances where parents cannot transport their children payments in accordance with the above schedule are inadequate and adherence to such schedule would subject the parents or guardians of a school child or the child himself to financial or physical hardship the schedule may be altered by the county transportation committee subject to written approval by the state superintendent of public instruction; provided, that, in no case shall the altered schedule allow more than thirty dollars (\$30.00) per month for one child, twelve dollars (\$12.00) per month for the second child, and six dollars (\$6.00) per month for each child in addition to two (2) from the same family. A degree of isolation chart shall be provided school district trustees by the state superintendent of public instruction to serve as a guide in requesting increased transportation due to isolation.

The applicant for such alteration of the schedule shall submit a written statement in duplicate to the board of trustees of the district which is obligated to make payment for transportation or services in lieu thereof, and to the county transportation committee through the county superintendent, stating the special facts and circumstances upon which he relies to justify

the alteration. The county transportation committee shall act on the application regardless of the approval or disapproval by the board of trustees of the district wherein such application was initiated.

If such application be approved by the county transportation committee and alterations of the schedule will result in increased payments to be made by the state to the district, the application and pertinent data and the decision of the county transportation committee shall be submitted to the state superintendent of public instruction for final approval or disapproval.

(i) to (l). \* \* \* [Subdivisions (i) to (l), same as parent volume.]

**History:** En. Sec. 7, Ch. 152, L. 1941; amd. Sec. 1, Ch. 189, L. 1943; amd. Sec. 1, Ch. 116, L. 1945; amd. Sec. 2, Ch. 200, L. 1949; amd. Sec. 5, Ch. 189, L. 1951; amd. Sec. 1, Ch. 191, L. 1955.

application unless it has been approved by the district board," and in the third paragraph changed the word "alteration" to "alterations."

#### Amendment

The 1955 amendment in the second paragraph of subd. (h) substituted the sentence "The county transportation committee shall act on the application regardless of the approval or disapproval by the board of trustees of the district wherein such application was initiated" for one which read "The county transportation committee shall not act upon any such

#### Repealing Clause

Section 2 of Ch. 191, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 191, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

**75-3412. Transportation matters in controversy—settlement—county transportation committees.** All transportation matters in controversy shall be settled by the county transportation committee hereinafter defined. Provided, that, if the applicant for transportation feels that he has not met with justice in the decision of the county transportation committee, he may appeal to the state superintendent of public instruction, in which case the county superintendent shall send to the state superintendent of public instruction all data and evidence connected with the case.

(a) To facilitate and administer the policies relating to the transportation of school pupils, there are hereby created county transportation committees. Such committees shall be organized in each county and shall consist of the county superintendent of schools, the chairman of the board of county commissioners, or such other member of the board as he may designate, one representative chosen by each high school board of trustees, who shall be a member of the board, or the high school superintendent, and a trustee from the elementary districts in each high school district who shall be selected at a joint meeting of the elementary district boards within the high school district. In counties which do not have high school districts, the elementary district representatives shall be selected at a county-wide meeting of the boards of trustees of the elementary districts of the county in a number equal to those of the high school boards, excepting that in no case shall an elementary district member of the transportation committee be a member of a school board which is both a high school board and an elementary district board. Provided, however, that the county transportation committee shall have not less than five members and that where there is only one high school board in the county that both the high

school board and the elementary districts may select two representatives. The county superintendent of schools shall be chairman of this committee and a quorum shall consist of two-thirds (2/3) of the membership. It shall be the duty of the county transportation committee to approve bus routes and applications for increased transportation payments, and to act in all controversies resulting from transportation matters.

When the transportation interests of a district are affected by the actions and interest of the county transportation committee of another county, it shall be represented on the county transportation committee of both counties, but shall have a voice only in matters affecting its high school.

Any school district which objects to the particular bus route or transportation area to which it has been assigned may upon vote of its board of trustees signifying such objection, be assigned to an adjoining district or transportation area which maintains a public high school, provided that the board of trustees of the latter school is willing to have such district assigned to its area. In case of a continued disagreement, on the initiative of a petition signed by twenty per cent (20%) of the qualified electors of any district indicating dissatisfaction with the area to which it has been assigned the board of trustees shall place the matter of which area to belong to at the trustee election in April; provided, however, that if such pupils are not transported to the nearest high school, the state reimbursement shall be limited to the amount which would be paid if they were transported to the nearest high school, unless such attendance has been approved by the county transportation committee and the state department of public instruction. The state board of education through the state superintendent of public instruction shall formulate such rules and regulations as may be necessary for establishing high school transportation areas for determining residence of pupils, and for carrying out the purposes of this act; provided, however, that such regulations shall not prevent or deny to any parent the right to transport or arrange for transportation of his children at his own expense to the high school of any district willing to accept them. Any patron of a school district or portion of a school district dissatisfied with transportation matters in his county shall have the right of appeal to the county transportation committee and to the state superintendent of public instruction.

**History:** En. Sec. 12, Ch. 152, L. 1941; amd. Sec. 6, Ch. 189, L. 1951; amd. Sec. 1, Ch. 201, L. 1953; amd. Sec. 1, Ch. 105, L. 1955.

#### **Amendment**

The 1955 amendment reworded subd. (a). For this subdivision prior to amendment see parent volume.

#### **Repealing Clause**

Section 2 of Ch. 105, Laws 1955 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 105, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

### **75-3414. Budgets and levies for transportation.**

#### **Elementary School Outside District**

Transportation to another elementary school outside the district is paid from a budget of the district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 517.

#### **High School Pupils**

Transportation for high school pupils is provided at the expense of the state and county and not by the school district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 517.



CHAPTER 36—UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS—STATE  
SUPPORT—SCHEDULE OF CONTRIBUTIONS

Section 75-3612. Foundation program.

75-3618. Distribution of money available to districts—formula for apportionment of county funds.

**75-3612. Foundation program.** The moneys coming into said state public school equalization fund shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt retirement, and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation, in accordance with the following schedules:

### Elementary Schools

(1) For each elementary school having eight (8) or fewer pupils and which, upon the request of the board of trustees of the district, is approved as an isolated school by the county budget board, the district shall receive three thousand three hundred dollars (\$3,300.00), and if said school is not approved as an isolated school, then it shall receive seventeen hundred dollars (\$1,700.00).

(2) Schools with an ANB in excess of eight (8) but less than eighteen (18) pupils, shall receive three thousand three hundred dollars (\$3,300.00) plus one hundred twenty-five dollars (\$125.00) per pupil on the basis of average number belonging over eight (8).

(3) Schools having an ANB of eighteen (18), but less than forty-one (41), shall receive a maximum of forty-five hundred fifty dollars (\$4,550.00), plus forty-one hundred dollars (\$4,100.00) provided two (2) teachers are regularly employed as full time teachers in such school, plus fifty dollars (\$50.00) for each ANB over eighteen (18); forty-five hundred fifty dollars (\$4,550.00) shall be the maximum for any one-teacher school, plus fifty dollars (\$50.00) for an ANB over eighteen (18), not to exceed an ANB over twenty-five (25).

(4) Schools having an ANB in excess of forty (40) will be guaranteed funds only on the basis of the total pupils (ANB) in the district for elementary pupils as follows:

For a school having an ANB of more than forty (40), and employing a minimum of three (3) teachers, the maximum of three hundred twenty dollars (\$320.00) shall be decreased at the rate of sixty-five cents (\$0.65) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. Provided, however, that if only two (2) teachers are employed in a school with an ANB over forty (40) the maximum schedule shall be nine thousand seven hundred fifty dollars (\$9,750.00), plus fifty dollars (\$50.00) for each ANB over forty (40), not to exceed an ANB over fifty (50). For a school having an ANB of more than one hundred (100) pupils, the maximum of two hundred eighty-one dollars (\$281.00) shall be decreased at the rate of twenty-nine cents (\$0.29) for each additional pupil until the ANB shall have reached three

hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed two hundred twenty-three dollars (\$223.00) for each pupil; provided that the maximum per pupil, for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all the schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

### High Schools

For a school having an average number belonging (ANB) of forty (40) or fewer pupils in a school, the guaranteed budget shall not exceed five hundred thirty dollars (\$530.00) for each pupil. High schools shall not receive state equalization aid unless they have been accredited by the state board of education.

For a secondary school having an ANB of more than forty (40) pupils, the maximum five hundred thirty dollars (\$530.00) shall be decreased at the rate of two dollars and sixty cents (\$2.60) for each additional pupil until the ANB shall have reached a total of one hundred (100) such pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of three hundred seventy-four dollars (\$374.00) shall be decreased at the rate of sixty-five cents (\$0.65) for each additional pupil until the number ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, a maximum of three hundred nine dollars (\$309.00) shall be decreased at the rate of ten cents (\$0.10) for each additional pupil until the total number, ANB, shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of two hundred ninety-nine dollars (\$299.00) shall be decreased at the rate of five cents (\$0.05) for each additional pupil until the total number, ANB, shall have reached nine hundred (900) pupils. Schools having an ANB in excess of nine hundred (900) pupils shall receive two hundred sixty-nine dollars (\$269.00) per pupil, provided that the maximum per pupil for all pupils, ANB, shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

In computing the amount guaranteed for the foundation program, only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment.

**History:** En. Sec. 3, Ch. 199, L. 1949; amd. Sec. 1, Ch. 244, L. 1953; amd. Sec. 1, Ch. 241, L. 1955; amd. Sec. 1, Ch. 251, L. 1957; amd. Sec. 1, Ch. 267, L. 1959.

#### Compiler's Note

Section 2 of Ch. 251, Laws 1957 amended section 4 of H. B. 384. It read as follows:

"Section 4. It is hereby provided that none of the funds allocated, or any other funds allocated to the state public school equalization fund, shall be paid out to the

school districts of the state in excess of the foundation program needs, as established by section 75-3612, Revised Codes of Montana, 1947, as amended, or in excess of the state equalization percentage established under the provisions of section 75-3619, Revised Codes of Montana, 1947."

#### Amendments

The 1955 amendment inserted the words "and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten-

ten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation" in the preliminary paragraph of the section.

In subd. (1) under the heading "Elementary Schools" the amount for approved schools was increased from \$2,500 to \$2,900 by the 1955 amendment, to \$3,200 by the 1957 amendment, and to \$3,300 by the 1959 amendment. In the same subdivision the amount for unapproved schools was increased from \$1,500 to \$1,700 by the 1955 amendment.

In subd. (2) under "Elementary Schools" the minimum amount was increased from \$2,500 to \$2,900 by the 1955 amendment, to \$3,200 by the 1957 amendment, and to \$3,300 by the 1959 amendment. In the same subdivision the amount per additional pupil was reduced from \$100 to \$85 by the 1959 amendment, restored to \$100 by the 1957 amendment, and increased to \$125 by the 1959 amendment.

In subd. (3) under "Elementary Schools" the 1955 amendment increased the maximum size of schools of the described class from 30 to 40 pupils. In the same subdivision the maximum for one-teacher schools was increased from \$3,500 to \$3,900 by the 1955 amendment, to \$4,200 by the 1957 amendment, and to \$4,550 by the 1959 amendment. In the same subdivision the basic additional amount for two-teacher schools was increased from \$2,700 to \$3,500 by the 1955 amendment, to \$4,000 by the 1957 amendment, and to \$4,100 by the 1959 amendment. In the same subdivision the 1957 amendment added the provision for \$50 additional per pupil over 18 for two-teacher schools. The final clause, setting a maximum for one-teacher schools, was added by the 1955 amendment, which set the amount at \$3,900, increased to \$4,200 by the 1957 amendment and to \$4,550 by the 1959 amendment. The 1957 amendment added to this clause the provision for \$50 for each additional pupil from 18 to 25.

In both paragraphs of subd. (4) under "Elementary Schools" the 1955 amendment increased the minimum size of schools within the described class from 31 to 41 pupils. In this same subdivision the 1955 amendment inserted the words "and employing a minimum of three (3) teachers" near the beginning of the second paragraph. In the first sentence of this same paragraph the maximum rate for schools of 40 to 100 pupils was increased from \$238 to \$272 by the 1955 amendment, to \$298 by the 1957 amendment, and to \$320 by the 1959 amendment; and the rate of decrease per pupil was increased from 40c to 43c by the 1955 amendment, to 45c by the 1957 amendment, and to 65c by the 1959

amendment. In the same paragraph the proviso pertaining to two-teacher schools now forming the second sentence of the paragraph was added by the 1955 amendment, which set the amount at \$7,400 plus \$75 per ANB over 40, increased to \$9,300 plus \$80 per ANB over 40 by the 1957 amendment, and changed to \$9,750 plus \$80 per ANB over 40 by the 1959 amendment. The 1957 amendment added to this proviso the clause limiting maximum ANB for computation purposes to 50. In the same paragraph, in the sentence pertaining to schools of 100 to 300 pupils, now the third sentence of the paragraph, the maximum rate was increased from \$210 to \$246.50 by the 1955 amendment, to \$271 by the 1957 amendment, and to \$281 by the 1959 amendment; and the rate of decrease per pupil was increased from 19c to 25 $\frac{1}{4}$ c by the 1955 amendment, to 27c by the 1957 amendment, and to 29c by the 1959 amendment. In the same paragraph, in the last sentence, which pertains to schools of over 300 pupils, the maximum rate was increased from \$172 to \$196 by the 1955 amendment, to \$217 by the 1957 amendment, and to \$223 by the 1959 amendment.

In the first paragraph under the heading "High Schools" the 1955 amendment reduced the maximum number of pupils in the class described from 60 to 40. In the first sentence of the same paragraph the maximum rate was increased from \$340 to \$450 by the 1955 amendment, to \$495 by the 1957 amendment, and to \$530 by the 1959 amendment. In the same paragraph the 1955 amendment substituted the present last sentence for a sentence reading: "A school having an ANB of less than twenty-five (25) pupils shall not receive any state aid unless it has been accredited by the state board of education and is designated by said board as a school which should receive state aid." In the sentence added by the 1955 amendment the 1957 amendment inserted and the 1959 amendment deleted the words "hereafter created" after "High Schools."

In the first sentence of the second paragraph under "High Schools" the 1955 amendment reduced the minimum size of schools in the class described from 61 to 41 pupils. In the same sentence the maximum rate was increased from \$340 to \$450 by the 1955 amendment, to \$495 by the 1957 amendment, and to \$530 by the 1959 amendment; and the rate of decrease per pupil was increased from \$1.25 to \$2.00 by the 1955 amendment, to \$2.20 by the 1957 amendment, and to \$2.60 by the 1959 amendment.

In the second sentence of the second paragraph under "High Schools," pertaining to schools of 100 to 200 pupils,



the maximum rate was increased from \$290 to \$330 by the 1955 amendment, to \$363 by the 1957 amendment, and to \$374 by the 1959 amendment; and the rate of decrease per pupil was increased from 40c to 45c by the 1955 amendment, to 55c by the 1957 amendment, and to 65c by the 1959 amendment.

In the third sentence of the second paragraph under "High School," pertaining to schools of 200 to 300 pupils, the maximum rate was increased from \$250 to \$285 by the 1955 amendment, to \$308 by the 1957 amendment, and to \$309 by the 1959 amendment; and the rate of decrease per pupil was increased from 25c to 27c by the 1955 amendment, reduced to 23c by the 1957 amendment, and reduced to 10c by the 1959 amendment.

In the fourth sentence of the second paragraph under "High Schools," pertaining to schools of over 300 pupils, the maximum rate was increased from \$225 to \$258 by the 1955 amendment, to \$285 by the 1957 amendment, and to \$299 by the 1959 amendment; and the rate of decrease per pupil was increased from 5c to 6c by

the 1955 amendment, increased to 7c by the 1957 amendment, and decreased to 5c by the 1959 amendment. The 1959 amendment also changed the dividing point between the two classes of schools described by the last two sentences of the second paragraph under "High Schools" from 650 to 900 pupils.

In the last sentence of the second paragraph under "High Schools" the maximum rate was increased from \$207.50 to \$237 by the 1955 amendment, to \$260.50 by the 1957 amendment, and to \$269 by the 1959 amendment.

#### Repealing Clauses

Section 3 of Ch. 251, Laws 1957 and section 2 of Ch. 267, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 267, Laws 1959 read "This act shall be in full force and effect from and after the first day of July, 1959."

**75-3618. Distribution of money available to districts—formula for apportionment of county funds.** After the deduction of transportation reimbursements provided by law, the proceeds of the county ten (10) mill common school levy and the proceeds of the county ten (10) mill special tax for high schools, shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school if there be one, in proportion to their needs under the foundation financial program. In all cases in which the proceeds of such county levy and the five (5) mill tax for elementary schools provided for in section 10 [75-1723] hereof, when added to all other funds available to the respective districts from the permanent school fund, payments by the federal government for Indian tuition, and all payments by it or any of its agencies in lieu of taxes, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, the proceeds of the county common school levy and the proceeds of the county special tax for high schools shall each be separately distributed in accordance with the following procedure; provided, however, that cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after the uniform district levy and county and state equalization aid have been received:

1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total costs of the foundation program for all such districts.

2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the county levy) bears to the cost of the foundation program of each such district.

3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of county funds but shall be excluded from further consideration under this section.

4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the county levy, which, when added to all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.

For the purpose of determining levies in a joint school district maintaining a high school, the total cost of the general fund and other budgets of such joint districts shall be divided in the ratio which the number of pupils in the joint district residing in the county bears to the total ANB of the joint district. Such resulting high school budgets shall be considered as separate budgets for high school purposes of the respective counties involved, receiving a part of the ten (10) mill levy, state equalization aid and additional moneys on either the high school district or the part of the joint school district involved as any other high school of the county.

For elementary budgets in a joint school district the total cost of the foundation program for such joint school district shall be divided in the ratio which the number of pupils in the joint district residing in the county bears to the total ANB of the joint district. Each part of such budget so divided shall be treated as a separate budget for such part of the joint district and one of the school districts of the county for the purpose of apportioning proceeds of the county levy. The resulting amount shall be used as the foundation financial program requirement of the joint district for the apportionment of the county levy. The balance of the budget over the foundation program, plus any deficiency in the state equalization payment on the foundation program, shall be an obligation of all parts of the joint school district and the levy for this amount shall be determined by dividing the amount required by the total taxable valuation of the entire joint school district.

5. No district school shall be deprived of its needful share of either county levy by reason of it being nonaccredited.

**History:** En. Sec. 17, Ch. 199, L. 1949; amd. Sec. 1, Ch. 182, L. 1951; amd. Sec. 1, Ch. 272, L. 1955.      pealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 272, Laws 1955 provided this act should be in effect from and after its passage and approval. Approved March 15, 1955.

#### **Amendment**

The 1955 amendment added subd. 5.

#### **Repealing Clause**

Section 2 of Ch. 272, Laws 1955 re-

## CHAPTER 38—EXTRA TAXATION FOR SCHOOL PURPOSES

Section 75-3804. Form and marking of ballot—conduct of election.

**75-3801. (1219) District school taxes—election.****Electors**

The fact that some electors pay taxes only on personal property does not disqualify them from voting at the election for the names of such electors appear on

the assessment roll the same as do those of the electors who pay taxes on real estate. *Habel v. High School District "C" of Cascade County*, 129 M 588, 292 P 2d 349, 351.

**75-3804. (1222) Form and marking of ballot—conduct of election.**

The ballot furnished electors at said election shall have printed thereon the following: "Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy) for the purpose of (insert the purpose for which the additional tax levy is made)?"

- ☐ For an additional levy to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills.
- ☐ Against an additional tax levy to raise the sum of (state amount to be raised by additional tax levy), and being approximately (give number) mills.

The voters shall mark the ballots in the same manner as ballots are marked under the election laws of this state. The election shall be held, votes canvassed and returns made as in other school elections. If the majority voting on the question are in favor of such additional levy, the board of trustees of said school district shall so certify to the board of county commissioners of the county in which said school district is situated the amount authorized by such election to be raised by such additional levy and such board of county commissioners shall make such additional levy in such number of mills as will raise such amount in the same manner that the levy for special taxes in said district is made.

**History:** En. Sec. 4, Ch. 93, L. 1917; re-en. Sec. 1222, R. C. M. 1921; amd. Sec. 3, Ch. 144, L. 1935; amd. Sec. 1, Ch. 281, L. 1959.

word "levies" for the words "regular ten mill levy" the first time it appears.

**Repealing Clause**

Section 2 of Ch. 281, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment substituted the

**CHAPTER 39—BONDS**

- Section 75-3912. Who entitled to vote—list of electors and precinct registers.  
 75-3913. Conduct of election—voting by absent electors.  
 75-3919. Form of bonds.  
 75-3938. Qualification of voters.  
 75-3942. Fixing specifications of bonds—registration—exchange of warrants for bonds.

**75-3908. (1224.8) Petition and election required for bond issues, etc.****Petitions to Rescind Valid Bond Elections**

There is no provision of the written law of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may

desire another election to vote on the question already favorably voted upon and carried, especially where, as here, no fraud is either alleged or shown in the conduct of the election already held. *Schmiedeskamp v. Board of Trustees of School District No. 24*, 128 M 493, 278 P 2d 584, 586.



**75-3910. (1224.10) Meeting of board of trustees to consider petition, etc.****References**Cited or applied in *Habel v. High School*

District "C" of Cascade County, 129 M 588, 292 P 2d 349, 352.

**75-3912. (1224.12) Who entitled to vote—list of electors and precinct registers.** In all school district bond elections hereafter held only qualified registered electors residing within the district who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote, provided however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another school district. Upon the adoption of the resolution calling for the election, the clerk of the school district shall notify the county clerk of the date on which the election is to be held, and qualified persons shall be allowed to register for such election up till noon of the fifteenth (15) day prior to the date thereof. At that time the registration books shall be closed for such election, but it shall not be necessary to give any notice of such closing of the registration books.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such district who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-515, and deliver the same to the school district clerk who shall deliver the same to the judge prior to the opening of the polls. In school districts of the first class it shall be the duty of the school district clerk to post such lists in five (5) public and conspicuous places within the district at least ten (10) days prior to the date of election. It shall not be necessary to post such lists in districts of the second and third class. A charge of five cents per name for the use and benefit of the county shall be made by the county clerk for preparing such list and precinct registers.

**History:** En. Sec. 12, Ch. 147, L. 1927; amd. Sec. 19, Ch. 64, L. 1959; amd. Sec. 1, Ch. 127, L. 1959.

**Compiler's Note**

This section was amended twice by the 1959 legislature. Once by Ch. 64 and once by Ch. 127. Chapter 64 did not contain a specific effective date while Ch. 127 provided the act should be in effect upon its approval. Chapter 127 was approved March 5, 1959. Each act amended this section in different respects, and as the amendments do not seem in conflict with each other, the compiler has made a composite section incorporating the changes as made by each act.

**Amendments**

The 1959 amendment by Ch. 64, in the second paragraph, substituted the words

"precinct registers" for the words "poll books" each time they appear.

The 1959 amendment by Ch. 127 added to the first sentence of the section the proviso relating to electors residing within the school district but voting outside the district.

**Repealing Clause**

Section 20 of Ch. 64, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 2 of Ch. 127, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 5, 1959.

**Electors**

The fact that some electors pay taxes only on personal property does not dis-

qualify them from voting at the election for the names of such electors appear on the assessment roll the same as do those of the electors who pay taxes on real

estate. *Habe v. High School District "C"* of Cascade County, 129 M 588, 292 P 2d 349, 351.

**75-3913. (1224.13) Conduct of election — voting by absent electors.** The bond election shall be conducted in the manner prescribed for the election of school trustees and return shall be made and canvassed in a similar manner. Any qualified elector entitled to vote at any school bond election who is absent from the county or who is physically incapacitated from attending the polling place at such election may vote thereat by complying with the provisions of Chapter 13 of Title 23 of the Revised Codes of Montana, 1947, as amended [23-1301 to 23-1321], except that the application of an absentee or physically incapacitated person for ballot may be made at any time within fifteen (15) days next preceding such bond election.

The school district clerk whose duty it is to cause the ballots to be prepared for the bond election shall furnish the county clerk with a supply of ballots prior to the fifteenth day next preceding the election for the use of the county clerk in furnishing ballots to applicants for absent voters' ballots.

The county clerk shall deliver to the judges of election at the opening of the polls all absent voters' ballots that he shall have received up to that time from absent or physically incapacitated electors. The procedure set out in Chapter 13 of Title 23 of the Revised Codes of Montana, 1947, as amended [23-1301 to 23-1321], shall apply to the voting by absent electors with respect to school bond elections.

**History:** En. Sec. 13, Ch. 147, L. 1927; amd. Sec. 1, Ch. 203, L. 1955.

#### **Amendment**

The 1955 amendment added all of this section immediately following the first sentence.

#### **Repealing Clause**

Section 2 of Ch. 203, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**75-3919. (1224.19) Form of bonds.** It shall not be necessary for the board of school district trustees to prescribe the detailed form of the bonds to be issued, but they must conform to all legal requirements for the payment thereof, whether they are issued as amortization or serial bonds. Such bonds shall be issued in the name of the school district and shall be signed by the chairman of the board of trustees and the school district clerk and attested with the corporate seal of the district if it has such seal. The coupons attached to the bonds shall also be signed by the said chairman and clerk. If the bonds are purchased by the state board of land commissioners, all payments of both principal and interest shall be made at the office of the state treasurer.

**History:** En. Sec. 19, Ch. 147, L. 1927; amd. Sec. 9, Ch. 260, L. 1959.

#### **Amendment**

The 1959 amendment deleted the words "but facsimiles of their signatures may

be affixed to the coupons in place of their signatures when so recited in the bonds" which appeared after the words "chairman and clerk."

**75-3938. (1253) Qualification of voters.** In all elections hereafter held for the issuance of bonds of any school district, town or city, only qualified registered electors who are taxpayers upon property therein, and whose names appear on the assessment-roll for the year next preceding such election, shall be entitled to vote thereat; provided, however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another school district, town or city.

**History:** En. Sec. 2, Ch. 104, L. 1921; amd. Sec. 1, Ch. 17, Ex. L. 1921; re-en. Sec. 1253, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1959.

**Effective Date**

Section 2 of Ch. 79, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 2, 1959.

**Amendment**

The 1959 amendment added the proviso clause to this section.

**75-3942. (1254.4) Fixing specifications of bonds — registration — exchange of warrants for bonds.** The board of school trustees shall, by resolution fix the rate of interest which said bonds shall bear not exceeding six per centum per annum, payable semi-annually; the denomination, form and terms thereof, which must be serial bonds for a term not to exceed ten years; such bonds and the coupons attached thereto shall bear the signatures of the chairman of the board of trustees and the clerk of said district; and the corporate seal of the school district shall be affixed to each of the bonds.

Upon execution, the bonds shall be deposited with the county treasurer, who shall register the same in a book provided for that purpose which shall show the number and amount of each bond, its date, the date payable and redeemable, and the person to whom the same is issued, and the county treasurer shall deliver the same to the person or persons to whom sold upon their making payment for the same or if so directed by the board of trustees to such person or persons who shall surrender an amount of warrants, which, with accrued interest, shall equal the par value of such bonds and such warrants so received by the treasurer shall be immediately canceled.

**History:** En. Sec. 4, Ch. 128, L. 1923; amd. Sec. 10, Ch. 260, L. 1959.

**Amendment**

The 1959 amendment substituted the words "and the coupons attached thereto shall bear the signatures of the chairman of the board of trustees and the clerk of said district" for the words "shall bear the

signature of the chairman of the board of trustees and shall be signed by the clerk of said district; and the coupons attached to the bonds shall be signed by the said chairman and clerk, provided a facsimile of the signatures of the chairman and clerk may be affixed to the coupon only when so recited in the bonds."

**CHAPTER 41—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS**

Section 75-4101. High schools defined.

75-4103. Board of trustees of county high schools.

75-4116. County bond issue for county and district high schools.



**75-4101. (1262.1) High schools defined.** A high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises some one or more of the grades of school work intermediate between the elementary schools and the institutions of higher education of the state of Montana, and which has its own administrative head and corps of teachers under the direct supervision either of a district superintendent and the board of trustees of a school district, or of a county high school principal and board of trustees of such county high school, as the case may be.

Types of public high schools are defined and designated as follows:

1. A junior high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of the seventh, eighth, and ninth grades of the school system under the supervision of the district superintendent and board of trustees of the school district, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.

2. A senior high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of the tenth, eleventh, and twelfth grades of the school system, under the supervision of the district superintendent and board of trustees of the school district, or of the county high school principal and county high school board, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.

3. A six-year high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of grades seven through twelve inclusive of the school system under the supervision of the district superintendent and board of trustees of the school, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.

4. A regular four-year high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of grades nine through twelve, inclusive, of the school system under the supervision of the district superintendent and board of trustees of the school, or of the county high school principal and county high school board, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.

**History:** En. Sec. 1, Ch. 148, L. 1931; amd. Sec. 1, Ch. 250, L. 1957.

#### Compiler's Note

Section 2 of Ch. 250, Laws 1957 read "It is hereby provided that nothing in this act shall be construed to change or amend the budgeting powers of school districts granted under any existing statutes."

#### Amendment

The 1957 amendment added all that por-

tion of this section beginning with "Types of public high schools are defined and designated as follows: \* \* \*"

#### Repealing Clause

Section 3 of Ch. 250, Laws 1957 read "That section 75-4102 of the Revised Codes of Montana, 1947, shall be and the same is hereby repealed and all acts and parts of acts in conflict with this act are hereby repealed."

**75-4102. (1262.2) Repealed.****Repeal**

This section (Sec. 2, Ch. 148, L. 1931), by Sec. 3, Ch. 250, Laws 1957. For new provision see 75-4101.  
defining junior high school, was repealed

**75-4103. (1262.3) Board of trustees of county high schools.** Every county high school shall be under the general supervision and control of a board of trustees consisting of seven members, one of whom shall be the county superintendent of schools of the county wherein such county high school is located, and six of whom shall be appointed by the board of county commissioners of the said county. Provided, however, whenever the county commissioners receive a petition signed by fifteen per cent of the qualified electors in the county high school district requesting the election, the county commissioners of the county shall within not less than thirty days nor more than sixty days thereafter, submit to the electors in the county high school district the following question:

Shall the board of trustees of the county  
high school district be elected?

☐ For the election of trustees.

☐ Against the election of trustees.

If a majority of all of the votes cast be in favor of electing a board of trustees, then the provisions of sections 75-4104 and 75-4105 of the Revised Codes of Montana, 1947, shall no longer be applicable, but the following sections shall apply:

Four of the trustees to be elected shall come from the elementary school district in which the county high school is located, and the county commissioners and the county superintendent of schools shall immediately district the remaining portion of the county high school district into three trustee districts, and each district shall be entitled to one member on the county high school board.

The election of seven school trustees of the county high school shall be held on the first Saturday in April of every year to fill the expired terms of trustees, and the term of office of trustees after the first election of the county high school board shall be for three years. However, at the first election, four of the trustees elected shall be residents of the elementary school district where the high school is situated and three of the trustees elected shall be residents of the respective trustee districts set up by the board of county commissioners and the county superintendent of schools.

At the first election the four trustees elected from the elementary school district where the high school is located shall cast lots to determine which two shall hold office for one year, which one for two years and which one for three years. The three trustees elected from the trustee districts set up by the board of county commissioners and the county superintendent of schools shall cast lots to determine which one shall hold office for one year, which one for two years and which one for three years.

The procedures for calling and holding elections, and for the assumption of office, for first class school districts, set forth in R. C. M. 1947, section

75-1607 through 75-1613, shall govern the elections provided for in this act, the words "clerk of the district and county superintendent of schools" being synonymous with "the county clerk and recorder" when the former is used in the sections referred to, and the words "board of trustees" being synonymous with the words "county commissioners," if a majority of all the votes cast be in favor of electing a board of trustees of the county high school. Upon the election and qualification for office as hereinbefore set forth of all seven of the elected trustees, the county superintendent of schools shall no longer be a member of the board of trustees.

Any twenty-five electors qualified to vote in the election, shall file with the county clerk and recorder of the county, the nominations of as many persons as are to be elected to the county high school board at the elections herein provided for, at least twenty days preceding the election. The county clerk and recorder shall cause the names to be printed on a ballot not inconsistent with the provisions of the law relating to the election of other candidates.

Every citizen of the United States of the age of twenty-one years or over who has resided in the state of Montana for one year, and thirty days in the elementary school district or the trustee district as designated above, next preceding the election, shall be eligible for the office of school trustee and entitled to vote thereat.

Absence from the school district or trustee district for sixty consecutive days, or failure to attend three consecutive meetings of the board of trustees without good cause, shall constitute a vacancy in the office of trustee. When a vacancy occurs in the county high school board from any cause whatever, the fact shall be immediately certified by the secretary of the high school board to the board of trustees of the high school who shall immediately appoint, in writing, a qualified person, resident of the school or trustee district where the vacancy occurs and who shall serve until the next election as stated herein. At the next election, a new trustee shall be elected to fill the unexpired portion of the vacated term, from the district in which the vacancy occurs.

**History:** En. Sec. 3, Ch. 148, L. 1931; amd. Sec. 1, Ch. 278, L. 1959.

pealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1959 amendment added everything after the first sentence of this section.

#### **Effective Date**

Section 3 of Ch. 278, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 17, 1959.

#### **Repealing Clause**

Section 2 of Ch. 278, Laws 1959 re-

**75-4116. (1262.15) County bond issue for county and district high schools.** In any county where a county high school and also one (1) or more accredited district high schools are maintained bonds of the county may likewise be issued in accordance with the provisions of this chapter and for any of the purposes aforesaid, the proceeds of such issue to be divided among the county high school and accredited district high school, or schools of the county. The question submitted to the electors of the county shall definitely state the amount which is to be allotted to the county high school and the amount which is to be apportioned to or among



the accredited district high school, or schools; and in all such cases the amount allotted to the county high school and the amount to be apportioned among the accredited district high school or schools shall be computed upon the basis of the taxable valuation of the county high school district, and of all the accredited district high school districts of the county during the year preceding the submission of the question of the bond issue; provided, that in counties which have not been divided into high school districts, the distribution shall be computed upon the basis of the taxable valuation of the common school district in which the county high school is located, and the taxable valuation of all the common school districts maintaining district high schools in the county during the year preceding the submission of the question of the bond issue provided, further, that moneys apportioned to any high school district or common school district under this act, exclusive of the county high school, shall not be expended until the purpose for such expenditure has been approved by a vote of the people of the district at an election conducted in the same manner as the election to vote on extra taxes for school purposes.

**History:** En. Sec. 15, Ch. 148, L. 1931; amd. Sec. 1, Ch. 233, L. 1955.

#### **Amendment**

The 1955 amendment substituted the words "taxable valuation of the county high school district, and of all the accredited district high school districts" for the words "average daily attendance in the county high school, and in all the accredited district high schools" and added the proviso clauses.

#### **Repealing Clause**

Section 2 of Ch. 233, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 233, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

### **CHAPTER 42—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL EDUCATION**

Section 75-4230. Attendance outside of county of pupil's residence—transfer of apportionment.

75-4231. General powers and duties of boards of trustees.

**75-4230. (1262.81) Attendance outside of county of pupil's residence—transfer of apportionment.** The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of an adjoining county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper application has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the county of the student's residence.

Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupils' residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by two hundred fifty dollars (\$250.00) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; two hundred twenty-five dollars (\$225.00) in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400); and two hundred dollars (\$200.00) in case of attendance at a high school with an average number belonging over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

The total of the transfer budget shall be subtracted from the receipts from the county ten (10) mill levy for high schools before the remainder of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county treasurer upon instructions from the county superintendent.

In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

Whenever pupils are inmates of the Montana state orphans' home at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall be reimbursed from the state public school equalization fund at the rate of two hundred fifty dollars (\$250.00)

for each such pupil; provided, however, that this amount of tuition is not considered as a part of state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and payments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

**History:** En. Sec. 81, Ch. 148, L. 1931; amd. Sec. 4, Ch. 217, L. 1939; amd. Sec. 1, Ch. 219, L. 1943; amd. Sec. 1, Ch. 146, L. 1949; amd. Sec. 3, Ch. 106, L. 1951; amd. Sec. 1, Ch. 22, L. 1953; amd. Sec. 1, Ch. 70, L. 1959.

#### **Amendment**

The 1959 amendment in the fifth paragraph, raised the amounts of money stated by \$100 in each instance.

#### **Repealing Clause**

Section 2 of Ch. 70, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-4231. (1262.83) General powers and duties of boards of trustees.** The board of trustees of every county high school and of every school district maintaining a district high school shall have the power, and it shall be its duty:

1. \* \* \* [Same as parent volume.]

2. (a) At its discretion as restricted by law to purchase, or otherwise acquire, real estate to be used as a site or sites for a high school, high school dormitories, high school gymnasiums, and other high school buildings, or for any proper high school purposes, and to sell and to dispose of the same; at its discretion as restricted by law to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, and other buildings necessary for the high school, and to sell, move and dispose of the same; at its discretion as restricted by law to lease or contract with the board of trustees of any school district, or with any person, for suitable buildings or quarters to be used for any high school purposes or as a high school dormitory or gymnasium, and for such term not exceeding three (3) years as the board may deem for the best interests of the high school; at its discretion as restricted by law to purchase, or otherwise acquire, all necessary and appropriate equipment and supplies for the conduct, operation and administration of the high school, including high school dormitories and gymnasiums; at its discretion as restricted by law to make all contracts and to do all things necessary to carry out or execute all or any of the powers herein specified and conferred upon the board; provided, all boards of trustees of county high schools, or districts maintaining high schools, shall be prohibited from letting any contracts for building, furnishing, repairing or other work for the benefit of the school, or purchasing supplies for said school, where the amount involved is one thousand two hundred fifty dollars (\$1,250.00)



or more, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided further, that the board of trustees shall have the right to reject any or all bids; provided that these provisions shall not apply in case of extreme emergencies.

(b) But the board shall exercise no power whatsoever conferred upon it by this subdivision 2 whereby obligations are assumed or an indebtedness created in excess of the funds on hand, belonging to the high school, and not otherwise appropriated, or available to the board from the collection of taxes actually levied for the current year, or from the sale of bonds already authorized; and the power of the board to purchase, or otherwise acquire, or to sell, or dispose of, a site or sites for a high school, high school dormitories, high school gymnasiums, or other high school buildings, or for any proper high school purpose, or to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, or other buildings necessary for the high school or to sell, move or dispose of the same, shall be exercised only at the direction of a majority of the qualified electors of the county in the case of a county high school, or of the district in the case of a district high school, voting at an election to be called by the board, and otherwise noticed, conducted, canvassed and returned in the same manner as the annual election of school trustees in school districts of the first class.

(c) Provided, however, that where a site or sites for a high school, high school dormitories, high school gymnasiums or other high school buildings or for any other proper high school purposes is contiguous to a site upon which there exists a high school building erected and in use for high school purposes, the board may purchase or otherwise acquire such contiguous site or sites without calling for a vote of the qualified electors of the county, in the case of a county high school, or the district, in the case of a district high school, and upon the making of such a purchase of, or otherwise acquiring, such site or sites, the board may enter into a contract or obligation providing for the purchase of said site or sites by deferred payments and may incur indebtedness for the whole or any part of said purchase price and shall not be restricted in the terms of said contract or the amount of said purchase price except that the amount of the indebtedness incurred shall not exceed ten thousand dollars (\$10,000.00) as to principal and interest; provided further, however, that before making any such purchase the board shall duly pass a resolution declaring such lands to be purchased necessary for school purposes of said district, and provide for the purchase thereof; provided further, that notice of the meeting at which said resolution is to be considered for final adoption and of the proposed passage of said resolution shall be given as provided by law for notices of election of trustees, at which meeting the electors of said district shall have the right to be present and to protest the passage of said resolution.

(d) If at the hearing on such resolution protests against the adoption of the same shall be made and the board of trustees shall adopt the same over such protests, the resolution shall not become effective for fifteen

(15) days after the date of its adoption, during which time any taxpayer or taxpayers may appeal to the district court by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk or secretary of the board of trustees. Said petition shall set forth in detail the objections of the petitioners to the adoption of such resolution or to the purchase of the property as provided for in said resolution. The service and filing of said petition shall operate to stay such resolution until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing the same which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination shall be final.

3 to 15. \* \* \* [Subdivisions 3 to 15, same as parent volume.]

**History:** En. Sec. 83, Ch. 148, L. 1931; raised the amount from \$750.00 to  
amd. Sec. 1, Ch. 207, L. 1939; amd. Sec. 2, \$1,250.00.  
Ch. 106, L. 1951; amd. Sec. 1, Ch. 43, L. 1955.

#### References

Cited or applied in *Habel v. High School District "C" of Cascade County*, 129 M 588, 292 P 2d 349, 351.

#### Amendment

The 1955 amendment in subd. 2 (a)

### CHAPTER 46—HIGH SCHOOL DISTRICTS—PUBLIC WORKS

Section 75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings.

75-4602. Commission may divide county into high school districts.

75-4609. Special tax levy—election.

**75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings.** In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining district high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district so request. Such requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3). This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class or two (2) in districts of the third class.

(a) The additional members elected to the board of trustees of dis-

tricts maintaining high schools shall be elected at a meeting of the trustees of all of the boards of trustees of the common school districts included within the boundaries of the high school district, which meeting shall be held on the fourth Saturday in April beginning with the year 1951. The members so elected shall hold office for a term of three (3) years and such meetings and elections shall be held every third year after the first meeting. The state superintendent of public instruction shall make all necessary rules and regulations for the conduct of said meeting and it shall be the duty of the county superintendent of schools to give written notice of the meetings by registered mail to each trustee not less than seven (7) days before such meeting. The additional trustees elected shall be elected from the trustees of the common school districts included within the high school district with the exception of the membership of the board of trustees of the school districts maintaining high schools.

(b) The additional members elected to the board of trustees of districts maintaining high schools, shall take office immediately after qualifying and shall participate on an equal basis with other members in all business transacted by the board of trustees pertaining to the high school maintained by said districts. Said additional elected members shall be entitled to vote on the selection of the district superintendent of schools.

To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for, is hereby authorized to undertake a program of public works in the construction, improvement or repair of buildings, furnishing and equipping the same and purchasing the necessary land therefor, for the use of any or all high schools in such high school district, and to accept funds from the United States, its instrumentalities or any of its agencies in aid of any one or more of such purposes. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor, such proceedings may also be commenced on petition of thirty per cent (30%) of the qualified electors of the high school district. Upon presentation of this petition to the high school district board of trustees, the latter shall, within sixty (60) days take steps to present the matter asked for in the petition to a vote of the people of the high school district.

**History:** En. Sec. 1, Ch. 275, L. 1947; amd. Sec. 1, Ch. 188, L. 1951; amd. Sec. 1, Ch. 67, L. 1957; amd. Sec. 1, Ch. 167 L. 1959.

#### **Amendments**

The 1957 amendment deleted the words "and the board of the district in which the high school is located" which appeared near the end of the first sentence between the words "district" and "so."

The 1959 amendment added the last sentence to the paragraph designated (b).

#### **Repealing Clause**

Section 2 of Ch. 67, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 67, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

#### **References**

Cited or applied in *Habel v. High School District "C" of Cascade County*, 129 M 588, 292 P 2d 349, 351.

**75-4602. Commission may divide county into high school districts.** In all counties having a high school, or high schools, a commission con-



sisting of the county commissioners and the county superintendent of schools shall at the request of any high school board of trustees in the county, divide the entire county into and establish one (1) or more high school districts for the purpose of this act, after hearing; provided, that each high school district so formed must have one (1) or more operating, accredited high schools within its boundaries; provided, further, that both parts of a joint district maintaining a high school may be considered as maintaining an operating high school, and as such each part of the joint district may, together with one (1) or more adjacent common school districts whose pupils attend the high school in the joint district, be set aside as a high school district. Provided, that, such resulting high school district in the county where the joint district high school is not located, shall be responsible for its share of the joint district high school budgets as is arrived at by following the procedure outlined in section 17, chapter 199, Laws of 1949 [75-3618], and shall also be considered as a single high school district with the high school district of the joint district, wherein the high school is located for purposes of bonding as provided in sections 75-4601—4605, R. C. M., 1947, as amended by chapter 188, Laws of 1951, and also for purposes of selecting additional trustees as provided for in section 75-4601, R. C. M., 1947, as amended by chapter 188, Laws of 1951. That the commission shall fix the time, date and place, and at such time, date and place hold a public hearing of the requested division of the county into high school districts, at which hearing any interested person may appear and be heard concerning the requested division. Written notice of such hearing shall be mailed by the county superintendent of schools to the chairman of each and every board of trustees of each and every school district in the county, and the chairman of the board of trustees of the county high school, stating the time, date and place of such public hearing, and shall be mailed not less than two (2) weeks preceding the date fixed for such hearing. The certificate of the county superintendent of schools filed with the commission reciting that said notices were mailed shall be conclusive.

The boundaries established by said commission shall be subject to the approval of the superintendent of public instruction.

If any high school district shall cease to have within its borders an operating, accredited high school, then it shall be the duty of the county superintendent of schools to consolidate and annex the common school districts comprising said high school district to one or more operating high school districts within a period of six (6) months after one (1) year of being declared non-operating or non-accredited; provided, that before said county superintendent of schools may declare such a consolidation and annexation, he shall give the board of trustees of each of the common school districts within said high school district proposed to be consolidated and annexed twenty (20) days' notice of his intention so to do.

In creating such districts the commission shall give primary consideration to the factor of convenience of the patrons of the several schools. Common school districts may be grouped for the purpose of this act and when practicable high school districts shall be made up of contiguous and adjacent common school districts but the commission must take into

consideration the existence or non-existence of obstacles of travel, such as mountains and rivers and existence or non-existence of highways and distances to high school. No common school districts shall be divided for the purpose of this act but must be made a part of a high school district in its entirety, unless such division is approved and authorized by the voters of the common school district involved, at a special election held for that purpose and such division shall be on the basis of equal area, or as near thereto as practicable in relation to the geographical features of such district, provided that the entire portion of a joint school district within the county shall be included within a high school district, provided further that in the event twenty per cent (20%) of the voters of a common school district be dissatisfied with the proposed action of said commission in dividing into and establishing high school districts, or in the proposed action of the county superintendent in consolidating and annexing a common school district theretofore constituting a part of a high school district to an existing high school district, and shall within thirty (30) days after the giving of the notice heretofore required, file their written protest with said county superintendent, then said common school district or districts shall be by said county superintendent, or by said commission as the case may be, directed to hold a special election for the purpose of determining which high school district said district shall be annexed to or into which high school district said district shall be divided as hereinbefore provided, and the said superintendent or commission, as the case may be, shall be governed by the result of said election.

**History:** En. Sec. 2, Ch. 275, L. 1947; amd. Sec. 2, Ch. 188, L. 1951; amd. Sec. 1, Ch. 237, L. 1953; amd. Sec. 1, Ch. 236, L. 1955.

#### **Amendment**

The 1955 amendment added the proviso clause in third paragraph; substituted the word "primary" for "first" in the first sentence of the fourth paragraph and added the proviso clause.

#### **Repealing Clause**

Section 2 of Ch. 236, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 236, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

**75-4609. Special tax levy—election.** Whenever the board of trustees of the local school district within which the high school is situated shall deem it necessary to raise money for high school purposes in addition to its revenues from county and state apportionments, a meeting of the board of trustees of the high school district together with the chairmen of the boards of trustees of all common school districts included within the high school district shall be called and held to consider the calling of an election to vote upon the question of approving a special levy for high school purposes. Provided, that any other member designated by the board of trustees of any such common school district may represent such district in place of the chairman thereof. If a majority of the board of trustees of the high school district and the designated representatives of said common school districts attending such meeting shall determine that the proposed expenditures are necessary for the purposes of, altering, repairing or enlarging any high school or high schools of said district or for proper maintenance and operation of the

high schools of said district or for acquisition of land for high school purposes, said trustees of the high school district shall ascertain and determine the number of mills required to be raised by special levy, and shall call an election for the purpose of submitting the question of making such additional levy to the qualified electors who are taxpayers upon property within the high school district, and if approved by a majority vote of all the taxpayers voting at such election, the result of said election shall be certified to the board of county commissioners, and the levy approved by such majority vote shall be made upon all property within said high school district.

**History:** En. Sec. 3, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953; amd. Sec. 1, Ch. 147, L. 1959.

maintenance and operation of such high school."

#### Amendment

The 1959 amendment in the first part of the final sentence, substituted "for the purposes of, altering, repairing or enlarging any high school or high schools of said district or for proper maintenance and operation of the high schools of said district or for acquisition of land for high school purposes" for "for the proper

#### Repealing Clause

Section 2 of Ch. 147, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 147, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

### CHAPTER 50—EDUCATION CLASSES FOR MENTALLY AND PHYSICALLY HANDICAPPED CHILDREN

- Section 75-5001. Special education—mentally handicapped children—physically handicapped children.
- 75-5002. Courses of instruction—preparation—cooperation.
- 75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation.
- 75-5004. Mentally handicapped children not to be deprived of school privileges without consent of state superintendent—notifying local welfare department and state training school of those excluded.
- 75-5005. Petition of parents for establishment of special teaching program.
- 75-5006. Qualifications of teachers—medical, psychiatric, and psychological services—promotion, direction and supervision of special education—supervisor—agency for cooperation with other agencies—courses of study, size of classes, distances to be traveled.
- 75-5007. Supervisor—powers and duties.

**75-5001. Special education—mentally handicapped children—physically handicapped children.** Within the meaning of this act special education is that type of education requiring special facilities or instruction because of physical or mental deviation from the average on the part of some children. These handicapped are defined as follows:

(1) Mentally handicapped children are children who are not capable of profiting from the general educational program of the public schools. These children may be considered in three groups as follows: (a) Educable mentally handicapped. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an eleven-year-old, but not less than that of a seven-year-old. (b) Trainable mentally handicapped. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old and who, for



entrance into a training program, are capable of walking, of clean bodily habits, and of obedience to simple commands. (c) Custodial mentally handicapped. Those children who do not show a likelihood of attaining clean bodily habits, responsiveness to directions, or means of intelligible communication. The public schools are to assume responsibility for only the educable handicapped groups.

(2) Physically handicapped children are those children who are capable of profiting from the general education program of the public schools, but who need special equipment, special services, and transportation to compensate for such physical handicaps as cardiac, cerebral palsy, or other physical handicaps including inadequate hearing and vision, which makes them unable to profit from the normal education processes without some special provision. Nothing herein shall be construed to interfere with the purpose and function of the School for the Deaf and Blind in Great Falls.

**History:** En. Sec. 1, Ch. 206, L. 1955.

#### **Title of Act**

An act to provide for special education classes in our public schools for the mentally and physically handicapped children, defining handicapped children, providing for courses of instruction, utilization of specialists, providing for local boards of trustees to furnish special education and transportation for the handicapped, and to exclude certain handicapped pupils, providing for reimbursements for special education classes, providing for the exclusion of certain men-

tally handicapped, making provision for parents to petition for special education, defining the duties of the state superintendent, the qualifications of special teachers, services of the state board of health and the state board of education, providing for a supervisor of special education and defining his duties, providing for the coordination of all agencies working in the field of special education for the handicapped child, and repealing all acts and parts of acts in conflict herewith and providing for the effective date of this act.

**75-5002. Courses of instruction—preparation—cooperation.** The state superintendent of public instruction, with assistance from the state board of health, and superintendent of the state training school, and with the approval of the state board of education, shall prepare courses of instruction in the discovery and education of the handicapped child.

The state superintendent of public instruction shall cooperate with the state board of health in the utilization of the board of health specialists in hearing, speech and physical defects, both on the state and local levels, and shall also utilize the Montana mental hygiene clinic and specialists at the state training school in determining the type of special instruction needed by mentally deficient children.

**History:** En. Sec. 2, Ch. 206, L. 1955.

**75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation.** The board of trustees in each school district may maintain special classes for educable mentally retarded children or for physically handicapped children, or may arrange to use the services of such approved crippled children's classes as may exist within the state, or may provide transportation services from home to school and return for all handicapped children enrolled in a state approved special education program of such ages as it deems wise; provided, that the local board has the right to exclude per-

sons of low intelligence or severe delinquent behavior. The determination of the children requiring special education and the type of special education needed by these handicapped children shall not be the responsibility of local boards of trustees but shall be the responsibility of the state superintendent of public instruction in cooperation with appropriate medical, psychiatric and psychological advice listed above. Two (2) or more districts may combine to provide such educational facilities.

Reimbursements on the part of the state for such programs shall be computed on the basis of counting each such mentally retarded child in such special classes as three (3) in average number belonging, and each physically handicapped child according to a schedule to be prepared by the state superintendent of public instruction, but in no case shall it be over three (3) average number belonging for each such child, prorated according to time and number in these special classes, or in home tutoring. Transportation reimbursements shall be made on a schedule arrived at by the state superintendent of public instruction, and such expenditures shall be added to the transportation budget of the district. The state shall reimburse two-thirds of such approved transportation.

Children sent to the crippled children classes in any other approved program within the state shall be counted on the rolls of the home district and the home district shall transfer the funds for each such child to the school district in which these classes are located according to prescribed schedules provided, however, that when children are sent to an institution supported by funds of the state of Montana the home district will not be required to transfer funds for such child.

**History:** En. Sec. 3, Ch. 206, L. 1955; amd. Sec. 1, Ch. 108, L. 1959.

#### **Amendment**

The 1959 amendment substituted the word "retarded" for the word "handicapped" each time it appears; substituted the word "all" for the word "physically" which appeared after the words "school and return for" in the first paragraph; inserted the words "enrolled in a state

approved special education program" in the first paragraph and raised the basis for computing reimbursement for mentally retarded children from two in average number to three in average number, at the beginning of the second paragraph.

#### **Repealing Clause**

Section 2 of Ch. 108, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**75-5004. Mentally handicapped children not to be deprived of school privileges without consent of state superintendent—notifying local welfare department and state training school of those excluded.** No mentally handicapped child shall be deprived of school privileges except with the express approval of the state superintendent of public instruction, upon appropriate medical, psychiatric, or psychological advice. Each child so excluded shall be brought immediately to the attention of the local welfare department and of the proper authorities of the state training school who shall be charged with responsibility for providing adequate protection and care, in keeping with available facilities, so far as the parents are willing to accept such services.

**History:** En. Sec. 4, Ch. 206, L. 1955.

**75-5005. Petition of parents for establishment of special teaching program.** The parents or guardians of seven (7) or more mentally handi-

capped children of one (1) type, living in one (1) town or in neighboring towns, which children can be taught together, may petition the district board or boards of trustees for the establishment of a special teaching program. The district board or boards of trustees shall request the state board of education for such advice and assistance as the state board of education considers appropriate in the organization of such a program.

**History:** En. Sec. 5, Ch. 206, L. 1955.

**75-5006. Qualifications of teachers—medical, psychiatric, and psychological services—promotion, direction and supervision of special education—supervisor—agency for cooperation with other agencies—courses of study, size of classes, distances to be traveled.** The state superintendent of public instruction, with approval of the state board of education, shall establish by regulation the qualifications of persons appointed to teach mentally handicapped children. The state board of health shall provide qualified medical, psychiatric, and psychological services as needed to assist the state superintendent of public instruction in making diagnoses, recommending care, or passing upon the eligibility of children for admission to or discharge from special programs for mentally handicapped children.

The state superintendent of public instruction, with the assistance of the state board of health, and with approval of the state board of education, shall make provision for the proper promotion, direction and supervision of special education for mentally and physically handicapped children and shall provide necessary and adequate supervision and consultation for the purpose of carrying out this act and shall appoint a supervisor and specify his qualifications. The state superintendent of public instruction shall be the agency for cooperation and consultation with federal agencies, other agencies and private bodies on matters of public school education of mentally and physically handicapped children, reserving to other agencies their full responsibilities for other aspects of the care of such children. Courses of study, size of classes, adequacy of methods of instruction, the distances to be traveled to each school or class and the necessary equipment and special services for mentally and physically handicapped children shall comply with the requirements prescribed by the state board of education, which shall also have authority to make any other needful regulations to carry out the purposes of this act.

**History:** En. Sec. 6, Ch. 206, L. 1955.

**75-5007. Supervisor—powers and duties.** The duties of the supervisor, under direction of the state superintendent of public instruction, with assistance from the state board of health and superintendent of the state training school shall be to discover the child needing special education throughout the state by observation, examination, and by intelligence, emotional and achievement tests, and such other methods as are deemed necessary and expedient by him, and to administer an educational program for the exceptional child and to supervise subjects and methods and equipment to be used in the classrooms and schools insofar as they affect the handicapped child, and provided, however, that the provisions of this act shall not be mandatory upon any school or school district.



For the purpose of properly educating and caring for such children, the supervisor shall see that the courses of instruction mentioned above shall be made available for all teachers in training and in service. He may recommend ungraded classrooms in schools, home study, special facilities or transportation. He may hold conferences, cooperate, consult, advise and investigate with school superintendents, principals, school facilities, individual teachers, parents, school boards, and other interested groups and persons. He may suggest physical or mental examinations and perform other duties within the limits of this act not specified but directed by the state superintendent of public instruction on approval of the state board of education.

**History:** En. Sec. 7, Ch. 206, L. 1955.

**Effective Date**

**Repealing Clause**

Section 8 of Ch. 206, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Section 9 of Ch. 206, Laws 1955 provided the act should be in effect from and after July 1, 1956.

## CHAPTER 51—FEDERAL AID

Section 75-5101. Federal funds—authority to accept.

75-5102. Federal aid to education fund—expenditures.

**75-5101. Federal funds—authority to accept.** The governor of the state of Montana and the superintendent of public instruction of the state of Montana are hereby authorized on behalf of the state of Montana to request and accept such funds as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction and/or for any other purposes in the operation and maintenance of public schools as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Said moneys shall be deposited by the governor and superintendent of public instruction in a special fund hereinafter created with the treasurer of the state of Montana.

**History:** En. Sec. 1, Ch. 173, L. 1957.

**Title of Act**

An act authorizing the governor of the state of Montana and the superintendent of public instruction to request and receive federal funds for public school building construction and/or for any other public school purposes; authorizing the use and

expenditure of such federal funds by the superintendent of public instruction of the state of Montana; and providing for deposits and appropriations without lapse; designating said funds as the "Federal Aid to Education Fund"; providing for a repealing clause; and providing for an effective date of this act.

**75-5102. Federal aid to education fund—expenditures.** There is hereby created in the treasury of the state of Montana a special fund to be known as the "Federal Aid to Education Fund." All moneys deposited into this fund are hereby appropriated and made available to the state superintendent of public instruction of the state of Montana. All moneys in the fund shall be expended for the purpose of public school building construction and/or for any other purposes in the operation and maintenance of public schools as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such expenditures shall be made under the supervision and discretion of said

superintendent of public instruction. Any balance in this fund shall not lapse at any time, but shall be continuously available to the state superintendent of public instruction for the expenditure consistent with this act and acts of the federal government.

**History:** En. Sec. 2, Ch. 173, L. 1957.

**Repealing Clause**

Section 3 of Ch. 173, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 4 of Ch. 173 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

## CHAPTER 52—LAW ENFORCEMENT ACADEMY

Section 75-5201. Act, how cited.

75-5202. Purpose.

75-5203. Establishment of Montana law enforcement academy.

75-5204. Eligibility.

75-5205. Advisory board.

75-5206. Powers and duties of the Montana law enforcement academy advisory board.

75-5207. Rights of officers attending academy.

75-5208. Expenditure of funds.

**75-5201. Act, how cited.** This act may be cited as the "Montana Law Enforcement Academy Act."

**History:** En. Sec. 1, Ch. 7, L. 1959.

**Title of Act**

An act to establish a permanent law enforcement academy for the state of Montana; providing for an advisory board to govern such academy; providing for powers and duties of the advisory board;

establishing rights of officers attending the academy; providing that the expenditure of county, city, town and municipal funds for this purpose shall be a lawful expenditure; providing for an effective date and repealing all other acts and parts of acts in conflict herewith.

**75-5202. Purpose.** The purpose of this act shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers with a means of securing additional training in the field of law enforcement.

**History:** En. Sec. 2, Ch. 7, L. 1959.

**75-5203. Establishment of Montana law enforcement academy.** There is hereby established a Montana law enforcement academy to be located at one of the units of the university of Montana, which unit shall be selected in the manner hereinafter provided. This academy shall be in session for a period not to exceed three weeks in any one year.

**History:** En. Sec. 3, Ch. 7, L. 1959.

**75-5204. Eligibility.** All bona fide Montana law enforcement officers shall be eligible to apply for admission to this academy.

**History:** En. Sec. 4, Ch. 7, L. 1959.

**75-5205. Advisory board.** The Montana law enforcement academy shall be governed by an advisory board composed of one representative of each of the following organizations or departments to be appointed by the president, chief executive or officer in charge of each of the following departments or organizations: The Montana sheriffs and peace

officers association, the Montana chiefs of police association, the county attorneys association, the attorney general's office, the Montana municipal league, the Montana county commissioners association and that unit of the university of Montana selected as a site for the academy. The representative of the university unit shall be selected after the site has been determined by the other members of the Montana law enforcement academy advisory board. The members of the advisory board shall be appointed for a term of one year and shall serve without compensation.

**History:** En. Sec. 5, Ch. 7, L. 1959.

**75-5206. Powers and duties of the Montana law enforcement academy advisory board.** The Montana law enforcement academy advisory board shall have the power and it shall be its duty to:

1. Establish rules and regulations for the government and conduct of the advisory board.

2. Choose a site for the Montana law enforcement academy at the unit of the university of Montana which in the determination of the board is best suited for the needs of the academy.

3. Establish qualifications for admission to the academy.

4. Select from among the qualified applicants those officers who are to attend the academy each year.

5. Determine the curriculum and methods of training for the officers attending the academy.

6. Select a faculty for the academy.

7. Establish rules for the conduct of the officers at the academy.

8. Award appropriate certificates to the officers who successfully complete their training; which certificate shall be signed by the chairman of the advisory board, the attorney general of the state of Montana and the president of the selected university unit.

9. Provide for the keeping of permanent records of enrollment, attendance, graduation and such other records as the board may deem necessary.

10. Make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state of the state of Montana.

11. Do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this act or the constitution and statutes of the state of Montana.

**History:** En. Sec. 6, Ch. 7, L. 1959.

**75-5207. Rights of officers attending academy.** All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority or other rights by reason of attendance at the academy.

**History:** En. Sec. 7, Ch. 7, L. 1959.

**75-5208. Expenditure of funds.** The expenditure of funds by any city, town, municipality or county for the board, room and travel expenses of the officers attending the academy shall be a lawful expenditure. All



counties of the state of Montana shall be allowed to expend an amount of money not to exceed ninety dollars (\$90.00) for the board and room of the officers attending the academy.

**History:** En. Sec. 8, Ch. 7, L. 1959.

**Effective Date**

**Repealing Clause**

Section 10 of Ch. 7, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Section 9 of Ch. 7, Laws 1959 provided the act should be effective from and after its passage and approval. Approved February 3, 1959.

# REVISED CODES OF MONTANA

## VOLUME 5 1959 Cumulative Pocket Supplement

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 5 OF THE  
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5  
THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

*Edited by*

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

*Editorial Supervisor*

WESLEY W. WERTZ

**THE ALLEN SMITH COMPANY**

Publishers

Indianapolis, Indiana



COPYRIGHT 1959

*by*

THE ALLEN SMITH COMPANY



## NEW LAWS IN VOLUME 5

For index see pocket supplement to Replacement Volume 9

### ENACTED IN 1957

Bond Validating Act of 1957, 79-2001 to 79-2003.  
Classification and appraisal of property for assessment, 84-429.7 to 84-429.13.  
Court review of determinations of state board of equalization regarding income taxes, 84-4923.1.  
Enabling Act, section 12 amendment, acceptance, 83-503.  
Gasoline license tax, 84-1801.1.  
Income tax overpayments, refunds and credits, 84-4956.  
Income tax refund account, 84-4957.  
State capitol building repair, 78-728 to 78-736.  
State tax levy, referendum measure, 84-3804 note.  
Surplus property, officers to receive, 82-3105, 82-3106.  
Tax sale lands, redemption after 20 years, 84-4132.1.  
War orphans' attendance at university without fee, 77-909 to 77-911.

### ENACTED IN 1959

Admission of patients to tuberculosis sanitarium, 80-210.1.  
Bond Validating Act of 1959, 79-2001 to 79-2003.  
Budget director, 79-1012 to 79-1018.  
Custodial officers at state prison, 80-707.1 to 80-707.5.  
Enemy attack—providing for succession of governor—emergency seat of government, 82-1309, 82-1310.  
Examination of accounts of university of Montana by state examiner, 82-1014 to 82-1016.  
Flood control funds, disposal, 79-2101, 79-2102.  
Intergovernmental cooperation, 82-2112, 82-2113.  
Payment or credit of tax on gasoline in storage in event of increase or decrease in tax, 84-1802.1.  
Referendum measure, state prison buildings, 80-701 note.  
Small business corporations, election as to taxable status, 84-1501.1, 84-1501.2.  
State land grazing leases, additional computation in fixing rental for grazing, 81-433.1.  
State tax levy, 84-3804.  
Tort actions against state, 83-701 to 83-707.  
Unemployment compensation commission building, 78-1001 to 78-1010.  
Withholding of income tax from payments to nonresidents, 84-4903.1 to 84-4903.13.

### AMENDMENTS IN VOLUME 5

Claims against state, 82-1109.  
Hail insurance, 82-1507.  
School for the deaf and blind, 80-108.  
Soil conservation, 76-102, 76-107, 76-108, 76-117.  
State controller, 82-109, 82-110, 82-112.  
State examiner, 82-1008.  
State fire marshal, 82-1231.  
State lands,  
    Grazing leases, 81-433.  
    Oil and gas leases, 81-1709.  
    Sale, 81-908.  
    State forester, 81-1403.  
State militia, 77-117.  
State prison, 80-705, 80-706, 80-720.  
Surplus property, 82-3102.

## AMENDMENTS IN VOLUME 5 (Continued)

### Taxation,

Assessments, 84-602 to 84-604.

Cigarette tax, 84-5601, 84-5602, 84-5606 to 84-5609, 84-5621.

Cities and towns, 84-4711.

Classification and basis, 84-301, 84-308.

Corporation license tax, 84-1501 to 84-1503.

Electrical energy producers' license tax, 84-1601.

Gasoline dealer's license tax, 84-1812, 84-1816, 84-1817.

Income tax, 84-4901 to 84-4903, 84-4907.1, 84-4910, 84-4911, 84-4914, 84-4915, 84-4937, 84-4943.

Metalliferous mines, license tax, 84-2004, 84-2006, 84-2007.

Mines, 84-5403, 84-5408, 84-5409.

Natural gas distributors, license tax, 84-2102.

Oil producers, license tax, 84-2202.

Special Fuel Tax Act, 84-1831, 84-1833, 84-1834, 84-1839.

State board, 84-708, 84-710.

Telephone companies, license tax, 84-2601, 84-2602.

Trust and legacy fund, 79-1202.

# MONTANA REVISED CODES

---

## TITLE 76—SOIL CONSERVATION

Chapter 1. State soil conservation districts law, 76-102, 76-107, 76-108, 76-117.

### CHAPTER 1—STATE SOIL CONSERVATION DISTRICTS LAW

- Section 76-102. Legislative determinations, and declaration of policy.  
76-107. Appointment, qualifications and tenure of supervisors.  
76-108. Powers of districts and supervisors.  
76-117. Change of district name—division and combination of districts.

**76-102. Legislative determinations, and declaration of policy.** It is hereby declared, as a matter of legislative determination:

A. \* \* \* [Same as parent volume.]

B. \* \* \* [Same as parent volume.]

C. The appropriate corrective methods. That to conserve soil resources and control and prevent soil erosion, and prevent floodwater and sediment damages and further the conservation, development, utilization and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety, and general welfare of the people of this state.



**History:** En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959.

#### **Amendment**

The 1959 amendment in subd. C inserted the words "and prevent floodwater and sediment damages and further the conservation, development, utilization and disposal of water"; inserted the words "and works of improvement for flood prevention and the conservation, develop-

ment, utilization, and disposal of water"; inserted the words "desilting basins, flood-water retarding structures, channel improvements, floodways, land drainage" and inserted the words "land drainage" after the words "contour furrowing." In subd. D the amendment inserted the clause beginning with the words "and for the prevention" and ending with the words "and disposal of water."

**76-107. Appointment, qualifications and tenure of supervisors.** The governing body of the district shall consist of five (5) supervisors, elected as provided hereinabove.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district

on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

**History:** En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959.

The selection of successor to fill an unexpired term, or for a full term shall be by election."

#### **Amendment**

The 1959 amendment substituted the sentence in the second paragraph beginning with the words "Any vacancy \* \* \*" for two sentences which read: "Vacancies shall be filled for the unexpired term.

#### **Repealing Clause**

Section 2 of Ch. 4, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**76-108. Powers of districts and supervisors.** A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the districts on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water may be carried out;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands of the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of

lands within the district, in the carrying on of erosion-control and prevention operations, and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from taxation by the state or any political subdivision thereof, to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this act;

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion, and for flood prevention, and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combination thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention projects, or combination thereof, within its boundaries; to accept donations, gifts, and contributions



in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not consistent with this act, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

**History:** En. Sec. 8, Ch. 72, L. 1939;  
amd. Sec. 2, Ch. 5, L. 1959.

**Repealing Clause**

Section 3 of Ch. 5, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

**76-117. Change of district name—division and combination of districts.** (1) Petitions for changing the name of a district organized under this act may be filed with the state soil conservation committee. Any such petition shall be signed by [a] majority of the district supervisors and shall state the present name of the district and the proposed new name. If the committee determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of such determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of such certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the state committee for the division of any district or the combination of any two or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of such actions may be initiated by the filing of a single petition with the committee. Any such petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The committee shall prescribe the form for such petition. Upon the filing of any such petition, the committee shall within thirty (30) days give due notice of public hearing upon such petition. All occupiers of lands within the affected districts, and all other interested par-

ties, shall have the right to attend such hearing and to be heard. After such hearing, the committee shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making such determination the committee shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the committee shall determine that the proposed division or combination, or division and combination, is administratively practicable and feasible, the committee shall affect such proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of such districts. If such determination is in the negative the committee shall make and record such determination and shall deny the petition. After six (6) months from the denial of such petition, a new petition may be filed involving any of such proposals.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each such divided part, the number of land occupiers and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of such allocation shall be filed with the state committee within thirty (30) days after the notification of the committee's determination in favor of the division of the district. Upon the failure of the supervisors to make, or to agree upon, such allocation, it shall be made by the committee after such hearings as the committee may deem necessary, and with due regard for the standards set out in this paragraph for making such allocations.

**History:** En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959.

changes in this section. For section prior to amendment see parent volume.

#### **Compiler's Note**

The bracketed word "a" was inserted by the compiler.

#### **Repealing Clause**

Section 2 of Ch. 41, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1959 amendment made numerous

## TITLE 77—SOLDIERS, SAILORS AND MILITARY AFFAIRS

- Chapter 1. Militia, composition, enrollment—officers, general provisions, 77-117.  
9. Veterans' free tuition at university of Montana, 77-909 to 77-911.

### CHAPTER 1—MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

Section 77-117. The adjutant-general of the state—assistant adjutant-general.

77-117. (1346) **The adjutant-general of the state—assistant adjutant-general.** There shall be an adjutant-general of the state of Montana, who shall be appointed by the governor, and shall have the rank of major general. He shall hold office for the term for which the governor appointing him shall have been elected, and until his successor shall have been appointed. He shall be selected from the active list of the national guard of this state and shall have been federally recognized in the rank of major or above immediately prior to his appointment. He shall have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately prior to his appointment. He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments. The salary of the adjutant-general shall be seventy-five hundred dollars (\$7,500.00) per annum, provided, however, that no part of said salary shall be paid by the state when the adjutant-general is on extended active duty with the United States military service or is receiving pay as a civilian employee of the federal government; provided that if, by reason of the call or draft of officers of the Montana national guard into the federal service, there are no officers of the national guard possessing the requisite qualifications as set forth above for appointment, then any officer of the national guard may be appointed as acting adjutant-general. There shall be an assistant adjutant-general of the state of Montana, who shall be appointed by the adjutant-general, with the approval of the governor. He shall be commissioned in the Montana national guard with rank not lower than that of captain. He shall assist the adjutant-general in the performance of his statutory duties, and, during the incapacity or absence from the state of the adjutant-general, shall act in his stead.

**History:** En. Sec. 23, Ch. 191, L. 1919; re-en. Sec. 1346, R. C. M. 1921; amd. Sec. 1, Ch. 21, L. 1949; amd. Sec. 1, Ch. 26, L. 1955; amd. Sec. 1, Ch. 272, L. 1959.

#### Amendment

The 1959 amendment substituted "major general" for "brigadier general, provided, however, that he shall, upon the completion of five years service in such rank, have the rank of major general"; substituted the word "for" the first time it appears in the second sentence for the words "at the pleasure of the governor,

and his commission shall expire with"; added the words "and until his successor shall have been appointed" and added the 3rd, 4th and 6th sentences in this section.

#### Repealing Clauses

Section 2 of Ch. 272, Laws 1959 read "Subsection twelve and subsection thirteen of section 77-120, Revised Codes of Montana, 1947, Replacment Volume 5, in conflict herewith are hereby repealed."

Section 3 of Ch. 272, Laws 1959 repealed all acts or parts of acts in conflict therewith.



**77-120. (1349) Duties of adjutant-general—salary.**

The introductory paragraphs and subds. (1) to (11). \* \* \* [Same as parent volume.]

(12) and (13). [Repealed.]

**Repeal of Subsections 12 and 13**

Subsections 12 and 13 of this section (Subsec. 12: En. Sec. 1, Ch. 118, L. 1947; re-en. Sec. 1, Ch. 20, L. 1949; subsec. 13: Sec. 2, Ch. 118, L. 1947 as

added Sec. 1, Ch. 20, L. 1949) relating to the annual salary of the adjutant-general and the assistant adjutant-general were repealed by Sec. 2, Ch. 272, Laws 1959.

## CHAPTER 9—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section 77-909. War orphans' attendance to be without fees.  
77-910. Board of education to determine eligibility.  
77-911. Supervision of attendance and charges.

**77-905 to 77-908. Repealed.****Repeal**

These sections (Secs. 1 to 4, Ch. 201, L. 1955), relating to war orphans' educa-

tional fund concerning purpose, eligibility, attendance and amount of payment, was repealed by Sec. 4, Ch. 141, Laws 1957.

**77-909. War orphans' attendance to be without fees.** There shall be established under this act the authority of the state board of education to waive, the charges for the matriculation, tuition, any and all educational fees, for such children of members of the armed forces of the United States who served on active duty during World War II and/or the Korean conflict and who, at the time of entry into such service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States, as are now attending or may hereafter attend any of the units of the greater university of Montana, provided any such child shall enter such institution prior to attaining the age of twenty-one (21) years.

**History:** En. Sec. 1, Ch. 141, L. 1957.

**Title of Act**

An act to provide educational opportunities in the units of the greater university of Montana for the children of members of the armed forces of the United States killed while in the armed services

of the United States or dying as a result of a disability or disease incurred while in said services during World War II and/or the Korean conflict; repealing Chapter 201, Laws of 1955; providing for the waiver of fees; repealing all acts and parts of acts in conflict herewith.

**77-910. Board of education to determine eligibility.** The state board of education shall determine the eligibility of any such child who shall make application for the benefits provided for in this act, and a finding by the United States veterans' administration that any such member was killed in action or died as the result of injury or other disability incurred in action shall be binding upon said board, but in the absence of such finding said board of education shall determine the facts.

**History:** En. Sec. 2, Ch. 141, L. 1957.

**77-911. Supervision of attendance and charges.** The state board of education shall satisfy itself of the attendance of any such child at any such institution.

**History:** En. Sec. 3, Ch. 141, L. 1957. chapter 201 of the Laws of 1955, and all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 4 of Ch. 141, Laws 1957 repealed

## TITLE 78—STATE CAPITOL

Chapter 7. State capitol repair and reconstruction, 78-728 to 78-736.

10. Unemployment compensation commission building, 78-1001 to 78-1010.

### CHAPTER 7—STATE CAPITOL REPAIR AND RECONSTRUCTION

- Section 78-728. 1957 bond issue authorized.  
78-729. Architect and/or engineer—employment.  
78-730. Bids—contractor's bond.  
78-731. Amount of bonds authorized.  
78-732. Interest—term—provisions.  
78-733. Sale of bonds—registration of bonds.  
78-734. Principal and interest—payment.  
78-735. State capitol building repair, interest and sinking fund.  
78-736. Budget act inapplicable.

#### 78-725. Principal and interest—payment.

##### Use of Capitol Land Grant Funds

Capitol land grant funds may be used to repair, renovate or reconstruct an old building and install a roll call voting machine in the chambers of the house of representatives, as such use is contemplated by section 12 of the Enabling Act, as it existed prior to amendment. State ex rel. Morgan v. Board of Examiners et al., 131 M 188, 309 P 2d 336, specifically overruling Bryant v. Board of Examiners et al., 130 M 512, 305 P 2d 340. (Dissenting opinion, 131 M 188, 309 P 2d 336, 341.)

Section 12 of the Enabling Act (as it existed prior to amendment in 1957), which authorized the use of land grant funds for erection or construction of buildings for executive, legislative, and judicial purposes, confers implied authority to keep the building in a proper state of repair so as to serve the purpose intended. State ex rel. Morgan v. Board of Examiners et al., 131 M 188, 309 P 2d 336, specifically overruling Bryant v. Board of Examiners et al., 130 M 512, 305 P 2d 340. (Dissenting opinion, 131 M 188, 309 P 2d 336, 341.)

**78-728. 1957 bond issue authorized.** The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of repairing the state capitol building at Helena, Montana.

**History:** En. Sec. 1, Ch. 248, L. 1957.

##### Title of Act

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of repairing the state capitol building; designating the funds

from which said bonds shall be paid; providing for a state capitol building repair, interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act.

**78-729. Architect and/or engineer—employment.** Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect and/or engineer to complete plans; and to proceed with the repair of the state capitol building without delay, as soon as proceeds from the bonds are available.

**History:** En. Sec. 2, Ch. 248, L. 1957.

**78-730. Bids—contractor's bond.** The state board of examiners shall call for bids for the repair of said building and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractors to give bonds to the state of Montana in the amount of one hundred per cent (100%) of the contract price, conditioned for the faithful performance of their duties and contracts.

**History:** En. Sec. 3, Ch. 248, L. 1957.



**78-731. Amount of bonds authorized.** The aggregate amount of bonds authorized by this act for the purposes herein expressed, shall not exceed the sum of one million dollars (\$1,000,000.00).

**History:** En. Sec. 4, Ch. 248, L. 1957.

**78-732. Interest—term—provisions.** Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at a rate not exceeding four per cent (4%) per annum, payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable at any time after the date of issue, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

**History:** En. Sec. 5, Ch. 248, L. 1957.

**78-733. Sale of bonds—registration of bonds.** Said bonds shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

**History:** En. Sec. 6, Ch. 248, L. 1957.

**78-734. Principal and interest—payment.** The principal and interest of the bonds authorized by this act shall be payable out of the following fund and from it only: All the income received from the capitol building land grant, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act. Any and all balances or sums now in said capitol building land grant fund or that may accrue to and become a part of said fund prior to the time of the sale of the bonds provided for herein, shall likewise be, and the same are hereby pledged and appropriated for the payment of principal and interest of the bonds authorized by this act, and to cover and pay the cost of repairing of said building to the extent said balances or accruals to said fund may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided, only for the total sum or amount necessary to be raised in excess of such total of all balances or sums now in, or that may be accrued to, said capitol building land grant fund, in order to make available for such repair of said building a total of one million dollars (\$1,000,000.00).

**History:** En. Sec. 7, Ch. 248, L. 1957.

**78-735. State capitol building repair, interest and sinking fund.** To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the state capitol building repair, interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the repair of said building.

**History:** En. Sec. 8, Ch. 248, L. 1957.

**78-736. Budget act inapplicable.** The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

**History:** En. Sec. 9, Ch. 248, L. 1957.

deemed to affect any other section or part hereof."

#### **Separability Clause**

Section 10 of Ch. 248, Laws 1957 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

#### **Effective Date**

Section 11 of Ch. 248, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

### **CHAPTER 10—UNEMPLOYMENT COMPENSATION COMMISSION BUILDING**

- Section 78-1001. Bond issue authorized for erection of unemployment compensation commission building.
- 78-1002. Architect—employment—construction and design.
- 78-1003. Bids—contractor's bond.
- 78-1004. Amount of bonds authorized.
- 78-1005. Interest rate—term—other provisions of bonds.
- 78-1006. Sale of bonds—registration.
- 78-1007. Payment of principal and interest.
- 78-1008. Unemployment compensation commission building interest and sinking fund.
- 78-1009. Purchase of bonds by board of land commissioners.
- 78-1010. Budget act not applicable.

**78-1001. Bond issue authorized for erection of unemployment compensation commission building.** The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of erecting an unemployment compensation commission building as an adjunct to the state capitol building at Helena, Montana, and for the purpose of landscaping and paving around said building, said building to be erected upon a site upon the present capitol building grounds, adjacent to the capitol buildings, namely lots 9 through 24, inclusive, in block 20 of the Corbin Addition to the City of Helena, County of Lewis and Clark, Helena, Montana.

**History:** En. Sec. 1, Ch. 196, L. 1959.

#### **Title of Act**

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of erecting an unemployment compensation commission building as an adjunct to the state capitol building; designating the funds from which said bonds shall be paid; providing for an

unemployment compensation commission building interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state board of land commissioners to purchase said bonds with moneys from the long term investment fund; providing a savings clause; and providing an effective date.

**78-1002. Architect — employment — construction and design.** Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications, and to proceed with the erection of a building of suitable construction and design for use as an unemployment compensation commission building within the limitations prescribed by the United States bureau of employment security and the United States secretary of labor.

**History:** En. Sec. 2, Ch. 196, L. 1959.

**78-1003. Bids—contractor's bond.** The state board of examiners shall call for bids for the construction of said building and for the landscaping and paving around it, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

**History:** En. Sec. 3, Ch. 196, L. 1959.

**78-1004. Amount of bonds authorized.** The aggregate amount of bonds authorized by this act for the purpose herein expressed shall not exceed the sum of six hundred thousand dollars (\$600,000).

**History:** En. Sec. 4, Ch. 196, L. 1959.

**78-1005. Interest rate — term — other provisions of bonds.** Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at a rate not exceeding five per cent (5%) per annum, payable semi-annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

**History:** En. Sec. 5, Ch. 196, L. 1959.

**78-1006. Sale of bonds—registration.** Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

**History:** En. Sec. 6, Ch. 196, L. 1959.



**78-1007. Payment of principal and interest.** The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the unemployment compensation commission at Helena, Montana, immediately following occupancy of said building upon completion of erection, pursuant to title III of the social security act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of six hundred thousand dollars (\$600,000).

**History:** En. Sec. 7, Ch. 196, L. 1959.

security act, referred to in this section, appear in 42 U. S. C. A. as § 903 and §§ 501 to 503, respectively.

**Compiler's Note**

Section 903 and title III of the social

**78-1008. Unemployment compensation commission building interest and sinking fund.** To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the unemployment compensation commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said building including the landscaping and paving around it.

**History:** En. Sec. 8, Ch. 196, L. 1959.

**78-1009. Purchase of bonds by board of land commissioners.** The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006 of the Revised Codes of Montana, 1947.

**History:** En. Sec. 9, Ch. 196, L. 1959.

**78-1010. Budget act not applicable.** The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

**History:** En. Sec. 10, Ch. 196, L. 1959.

be deemed to affect any other section or part hereof."

**Separability Clause**

Section 11 of Ch. 196, Laws 1959 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not

**Effective Date**

Section 12 of Ch. 196, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

## TITLE 79—STATE FINANCE

- Chapter 10. State budget act, 79-1012 to 79-1018.  
12. Montana trust and legacy fund—unified investment plan, 79-1202.  
13. Post War Planning and Construction Reserve Fund, Repealed—Section 1, Chapter 55, Laws of 1959.  
18. General refunding act applicable to all outstanding bonds, 79-1802.  
20. Bond validating act, 79-2001 to 79-2003.  
21. Flood control funds—disposal, 79-2101, 79-2102.

### CHAPTER 10—STATE BUDGET ACT

- Section 79-1012. Governor chief budget officer—appointment of budget director.  
79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.  
79-1014. Preliminary budget—preparation—submission to governor and governor-elect.  
79-1015. Submission of budget to legislature—form—contents.  
79-1016. Inquiries and investigations by budget director.  
79-1017. Other duties of director.  
79-1018. Power of director to demand and receive information from state departments, officers, etc.

#### 79-1002 to 79-1004. (295 to 297) Repealed.

##### Repeal

These sections (Secs. 2 to 4, Ch. 205, L. 1919; amd. Secs. 1, 2, Ch. 167, L. 1933; amd. Secs. 7, 8, Ch. 194, L. 1951; amd. Sec. 1, Ch. 155, L. 1955), relating to re-

quests for annual appropriation by departments and other state agencies and institutions, were repealed by Sec. 11, Ch. 158, Laws 1959.

#### 79-1004.1. Repealed.

##### Repeal

This section (Sec. 9, Ch. 194, L. 1951), relating to the examination of requests,

was repealed by Sec. 11, Ch. 158, Laws 1959.

#### 79-1005. (298) Repealed.

##### Repeal

This section (Sec. 5, Ch. 205, L. 1919; amd. Sec. 1, Ch. 163, L. 1921; amd. Sec. 3, Ch. 167, L. 1933; amd. Sec. 10, Ch. 194,

L. 1951), relating to the budget and budget bill, was repealed by Sec. 11, Ch. 158, Laws 1959.

#### 79-1010. (303) Repealed.

##### Repeal

This section (Sec. 10, Ch. 205, L. 1919; amd. Sec. 2, Ch. 46, L. 1937), relating to

printing and distribution of budget, was repealed by Sec. 11, Ch. 158, Laws 1959.

**79-1012. Governor chief budget officer—appointment of budget director.** The governor shall be the chief budget officer of the state and shall appoint a director of the budget, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out the provisions of this chapter.

**History:** En. Sec. 1, Ch. 158, L. 1959.

##### Title of Act

An act to make the governor the chief

budget officer of the state, requiring the governor to prepare and present a budget message and balanced budget to each regular session of the legislative assembly;

to establish the office of director of the budget and providing for the appointment of the director of the budget who shall hold office at the pleasure of the governor; requiring each department, state institution and agency to submit information requested by the director of the budget, providing that the director of the budget shall prepare a budget request for any department, institution or agency not submitting requested information; to provide for the preparation of a preliminary budget by the director of the budget; fixing the form and content of the budget and designating the items of revenue and expenditures which must be set forth and requiring a proposed budget bill and

recommendations for new sources of revenue; granting to the governor-elect the right to make comments and recommendations to be incorporated in the budget; granting power to the director of the budget to investigate the items submitted to his office and to demand and receive requested information from every department, officer, board, commission, or institution; to amend sections 82-109, 82-110 and 82-112 of the Revised Codes of Montana, 1947; repealing sections 79-1002, 79-1003, 79-1004, 79-1004.1, 79-1005, and 79-1010, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

**79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.** In the preparation of a state budget the director of the budget shall, not later than the fifteenth day of August in the year preceding the convening of the legislative assembly, distribute to all state offices and institutions, including the judicial department, the proper blanks necessary for the preparation of budget estimates. These blanks shall be in such form as shall be prescribed by the director of the budget to procure such information as the director of the budget shall, in his discretion, feel is necessary for the preparation of a budget including budget estimates, estimates of revenues, actual revenues received, expenditures made and other information classified and grouped as requested by the director of the budget and covering such period or periods of time as specified by the director of the budget.

(a) It shall be the duty of each department, state institution, and agency to submit information requested by the director of the budget on or before the fifteenth day of September in the year preceding the convening of the legislative assembly.

(b) If any department, institution or agency shall fail to present such requested information within the time herein specified, the director of the budget shall note that fact in the budget submitted to the governor, and the director of the budget shall prepare a budget request on behalf of such department, institution or agency, based upon his studies of the operations, plans and needs thereof.

**History:** En. Sec. 2, Ch. 158, L. 1959.

**79-1014. Preliminary budget—preparation—submission to governor and governor-elect.** Upon receipt of the completed forms and other available data and information, the director of the budget shall examine the same for the purpose of determining the necessity of the expenditures and funds requested by appropriations and shall, on or before the first day of December in the year preceding the convening of the legislature, submit to the governor and to the governor-elect, if one there be, in writing, a preliminary budget for the ensuing biennium containing the detailed information hereinafter required to be set forth in Part 2 of the budget to be submitted by the governor to the legislative assembly.

**History:** En. Sec. 3, Ch. 158, L. 1959.



**79-1015. Submission of budget to legislature—form—contents.** The governor shall, following the receipt of the preliminary budget from the director of the budget, have prepared a budget for the ensuing biennium and shall submit said budget to each member of the legislative assembly at the time of the convening of the legislative assembly. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, and shall be set up in three (3) parts, the nature and contents of which shall be as follows:

Part 1 shall consist of a budget message by the governor which shall outline the financial policy of the state government for the ensuing biennium and shall describe in connection therewith the important features of the financial plan; it shall also embrace a general budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed expenditures and the total anticipated revenues together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The general budget summary shall be supported by explanatory schedules or statements, classifying both expenditures and income contained therein by organization units and funds.

If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments and recommendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislative assembly without change, and it is the duty of the governor-elect in recommending changes to show a balance between proposed expenditures and anticipated revenue.

Part 2 shall set forth the detailed budget estimates, both of expenditures and revenues of each department, institution and agency of the state in the following manner:

1. The revenues from all sources including appropriations for each fiscal year of the last completed biennium, for the completed fiscal year of the current biennium, and appropriations and estimated revenue from other sources for the current fiscal year in progress. Revenue shall be classified by organization units, sources and funds.

2. Expenditures during each fiscal year of the last completed biennium, expenditures for the completed fiscal year of the current biennium and estimated expenditures for the current fiscal year in progress. These expenditures shall be classified by organization units, objects and funds.

3. The amount approved by the governor as necessary for the carrying on of the work of each department, office or institution itemized as to purpose for each fiscal year of the ensuing biennium.

4. Statements of the bonded indebtedness of the state government showing the debt redemption requirements, the debt authorized and unissued and the condition of the sinking funds.

5. A statement of the cash balances on hand in each of the funds at the close of each of the two last completed fiscal years.

6. A statement containing further recommendations of the governor should he deem it necessary.

Part 3 shall include a proposed budget bill, authorizing by departments, institutions and agencies, and by funds, all expenditures for each fiscal year of the ensuing biennium, and must be accompanied by detailed and specific recommendations as to new sources of revenue, if necessary, to balance and to finance the budget. If recommendations for new sources of revenue are submitted, estimates of revenue to be realized from such new sources must also be submitted.

**History:** En. Sec. 4, Ch. 158, L. 1959.

**79-1016. Inquiries and investigations by budget director.** The director of the budget shall make such further inquiries and investigations as he shall deem necessary as to any item included in the report and estimates furnished by any department, agency or institution. In making such investigations, he shall be allowed his necessary expenses of travel and subsistence as provided by law in visiting any institution or department in the state. The director of the budget may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

**History:** En. Sec. 5, Ch. 158, L. 1959.

**79-1017. Other duties of director.** The director of the budget in addition to the duties hereinbefore set forth shall perform such other duties as the governor as chief budget officer of the state may direct. He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislative assembly, the receipts from sources other than appropriations, and expenditures made by any department, office or institution of the state. The director of the budget shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance and claims and shall furnish to such committees any information required while said committees are considering the budget.

**History:** En. Sec. 6, Ch. 158, L. 1959.

**79-1018. Power of director to demand and receive information from state departments, officers, etc.** The director of the budget shall have power to demand and receive from every department, officer, board, commission, or institution, including the state controller, at any time, any and all information requested by the director of the budget.

**History:** En. Sec. 7, Ch. 158, L. 1959.

## CHAPTER 12—MONTANA TRUST AND LEGACY FUND—UNIFIED INVESTMENT PLAN

**Section 79-1202. Funds to be invested according to unified plan.**

**79-1202. (5668.20) Funds to be invested according to unified plan. 1.** The state board of land commissioners is hereby authorized and required to invest as part of the Montana trust and legacy fund the following: The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions of learning, subject to investment; the escheated estates funds, meaning all of the various sums paid

over to the state treasurer from estates escheated or escheating to the state which have not been transferred to the public school permanent fund; all funds arising from any donation, gift, grant, bequest or devise for the support, maintenance or benefit of any institution of learning or any institution supported in whole or in part by the state of Montana and not intended for immediate use but subject to long term investment and not legally in the custody of any lawfully constituted board, unless some other investment agency has been designated by the donor or by statute; all funds which become parts of the Montana trust and legacy fund under the provisions of article XXI of the constitution; and all other public funds of the state subject to long term investment not legally in the custody of any lawfully constituted board or the investment of which has not been designated by statute. Moneys in the Montana trust and legacy fund shall be invested subject to the provisions, regulations and limitations of sections 81-1001 to 81-1008, inclusive.

2. The state board of land commissioners is hereby authorized and required to invest in the long term investment fund the following: That part of the Montana highway patrolmen's retirement fund in excess of twenty-five thousand dollars (\$25,000.00); the public employees' retirement fund; the industrial accident reserve fund; all funds subject to investment as designated by the teachers' retirement board; that part of the fish and game fund designated as available by the Montana fish and game commission and all other funds designated by statute. Moneys in the long term investment fund may be invested as follows:

(a) In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government.

(b) In general obligation bonds of school districts within the state of Montana; in general obligation bonds of the several counties and cities of the state of Montana; in general obligation bonds of the state of Montana; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks; in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land adjacent to the capitol buildings; in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; the purchase of all such investments to be subject to the discretion of the board.

(c) In debentures issued by the federal housing administrator, and in obligations of national mortgage associations.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of fifty per centum (50%) or more of the loan made in the event of default by the United States government or an agency or corporate agency of the United States government and in obligations of housing authorities subject to the terms and limitations of section 35-143, provided, however, no more than fifty



per centum (50%) of the funds in one (1) account shall be invested in such mortgages. All securities purchased and all cash on hand for each fund shall be kept separate in the long term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

3. The state board of land commissioners is hereby authorized and required to invest in the short term investment fund any surplus cash in the office of the state treasurer; any money in any state bond sinking and interest fund, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds outstanding because of the same not being redeemable under the option provisions contained therein; any educational bond interest and sinking fund; any of the Montana highway patrolmen's retirement fund less than twenty-five thousand dollars (\$25,000.00) as directed by the Montana highway patrolmen's retirement board and any other fund designated by statute to be so invested or any fund in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which fund is requested by the officer, or officers or governing body and which fund is subject to investment. The funds in the short term investment fund may be invested as follows:

(a) The surplus cash in the office of the state treasurer may be invested in registered warrants of the state of Montana and in treasury obligations of the United States government. All warrants purchased shall bear no interest and the interest received from treasury obligations shall be credited to the general fund of the state of Montana.

(b) Any sinking and interest fund and any other funds may be invested in bonds of the state of Montana, bonds of the United States, in bonds issued by any agency or department of the United States, treasury obligations of the United States, and in interest-bearing warrants drawn against the general fund of the state of Montana; provided, however, that none of such moneys in any sinking and interest fund shall be invested in bonds or securities except such as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for the payment of principal and interest of the obligations for which the sinking and interest fund was created.

All securities purchased and all cash on hand for each fund shall be kept separate in the short term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities, an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field and there shall not be paid for such services an amount in excess of one thousand dollars (\$1,000.00) in any one fiscal year.

**History:** En. Sec. 2, Ch. 70, L. 1929; amd. Sec. 8, Ch. 176, L. 1953; amd. Sec. 1, Ch. 118, L. 1957; amd. Sec. 1, Ch. 173, L. 1959.

#### **Amendments**

The 1957 amendment in subd. 2(d) raised the per cent of funds in one account that can be invested in mortgages from 40% to 50%.

The 1959 amendment in subd. 2(b) inserted the words "in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land adjacent to the capitol buildings."

#### Repealing Clauses

Section 2 of Ch. 118, Laws 1957 and

Sec. 2 of Ch. 173, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 173, Laws 1959 provided the act should be in effect from and after its date of passage and approval. Approved March 7, 1959.

### CHAPTER 13—POST WAR PLANNING AND CONSTRUCTION RESERVE FUND

(Repealed—Section 1, Chapter 55, Laws of 1959)

#### 79-1301 to 79-1308. Repealed.

##### Repeal

These sections (Secs. 1 to 8, Ch. 148, L. 1945), relating to the post war planning

and construction reserve fund, were repealed by Sec. 1, Ch. 55, Laws 1959.

### CHAPTER 18—GENERAL REFUNDING ACT APPLICABLE TO ALL OUTSTANDING BONDS

Section 79-1802. Character of bonds—amortization or serial.

**79-1802. Character of bonds—amortization or serial.** All refunding bonds or debentures issued by the state board of examiners under the provisions of this act shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the state board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semi-annual payments due thereon, which coupons shall bear the signature of each member of the state board of examiners. The state board of examiners shall prescribe all other details for the form of the bonds or debentures, notice and time of sale. They shall be registered in the office of the state treasurer in a book to be provided for that purpose.

**History:** En. Sec. 2, Ch. 5, L. 1945; amd. Sec. 11, Ch. 260, L. 1959.

the signature of each member" for "shall be signed by the members" and substituted "shall bear the signature" for "may be signed with the facsimile signature."

##### Amendment

The 1959 amendment substituted "bear

### CHAPTER 20—BOND VALIDATING ACT

Section 79-2001. Short title of act.

79-2002. Definitions.

• 79-2003. Validation of bonds heretofore issued.

**79-2001. Short title of act.** This act may be cited as "The 1959 Bond Validating Act."

**History:** En. Sec. 1, Ch. 16, L. 1959.

**Compiler's Note**

Chapter 16 of Laws 1959 was substituted for Ch. 4, Laws 1957 and given the same section numbers as it is almost identical therewith. Chapter 4 of Laws 1957 had in turn been substituted for Ch. 5 of Laws 1955 which appeared in the parent volume.

**Title of Act**

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described, and providing that this act may be cited as "the 1959 bond validating act"; containing a repealing clause and providing an effective date.

**79-2002. Definitions.** The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

**History:** En. Sec. 2, Ch. 16, L. 1959.

**79-2003. Validation of bonds heretofore issued.** All bonds heretofore issued for any of the purposes for which bonds may be issued by any public body of this state and all proceedings heretofore taken for the authorization and issuance of bonds by such public body, and the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

**History:** En. Sec. 3, Ch. 16, L. 1959.

**Effective Date**

Section 5 of Ch. 16, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 6, 1959.

**Repealing Clause**

Section 4 of Ch. 16, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 21—FLOOD CONTROL FUNDS—DISPOSAL**

**Section 79-2101.** Moneys received from federal government under flood control act—distribution to counties.

**79-2102.** Expenditure of funds by counties.



**79-2101. Moneys received from federal government under flood control act—distribution to counties.** All moneys received or hereafter to be received by the state of Montana from the secretary of the treasury of the United States, under and by virtue of the Flood Control Act of 1954, under title thirty-three (33) United States Code annotated section 701-c-3, or which are now held in suspense accounts within the state of Montana, shall be distributed by the state to the county treasurers of the counties of the state of Montana wherein the flood control land is situated.

**History:** En. Sec. 1, Ch. 156, L. 1959.

**Title of Act**

An act relating to the distribution of moneys received by the state of Montana under and by virtue of the Flood Control Act of 1954 under title thirty-three (33) United States Code annotated section 701-c-3; providing for the distribution of such moneys by the state to the counties of Montana wherein such flood control land is situated; providing the counties receive-

ing such moneys shall expend fifty per cent (50%) thereof for the benefit of the county common schools in the county wherein such flood control land is situated and fifty per cent (50%) thereof for the benefit of the general public roads in the county wherein such flood control land is situated; providing and designating the funds into which such moneys shall be distributed by the county concerned; providing for a repealing clause; and providing for an effective date of this act.

**79-2102. Expenditure of funds by counties.** All moneys received or to be received by the county treasurers of the counties of the state of Montana wherein such flood control land is situated shall be deposited in the funds designated as the county common school tax fund and the general public road fund, and shall be expended as follows:

Fifty per cent (50%) of all moneys received or to be received shall be expended for the benefit of the county common schools in the county concerned, and fifty per cent (50%) of all moneys received or to be received shall be expended for the benefit of the general public roads in the county concerned.

**History:** En. Sec. 2, Ch. 156, L. 1959.

**Repealing Clause**

Section 3 of Ch. 156, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 4 of Ch. 156, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

## TITLE 80—STATE INSTITUTIONS

- Chapter 1. Montana state school for the deaf and blind, 80-108.  
2. Montana state tuberculosis sanitarium, 80-210.1.  
4. Farmers' institutes, Repealed—Section 1, Chapter 190, Laws of 1959.  
7. The state prison, 80-705 to 80-707.5, 80-720.

### CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

Section 80-108. Admission of nonresident children and advance payment of cost—Indian children.

**80-108. Admission of nonresident children and advance payment of cost—Indian children.** Deaf and blind children, who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state; provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and provided further that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state. Indian children who are wards of the United States and Montana residents shall be eligible to, and shall be admitted to such school on the same terms as residents. The school for the deaf and blind is hereby authorized to collect reimbursement from the United States government for expenses incurred in providing services for Indian children who are wards of the United States government.

**History:** En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957.

#### **Amendment**

The 1957 amendment inserted the words "and Montana residents" in the second sentence and substituted a period and the third sentence for a former proviso clause of the second sentence which read "provided, however, that the school for the deaf and blind children shall make claim

to and be entitled to receive reimbursement from the United States government for the care of such Indian children who are wards on the same basis and at the same rate as charges are made to non-residents admitted to said school."

#### **Repealing Clause**

Section 2 of Ch. 182, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 2—MONTANA STATE TUBERCULOSIS SANITARIUM

Section 80-210.1. Admission of patients to sanitarium.

#### **80-210. (1520) Repealed.**

##### **Repeal**

This section (Sec. 10, Ch. 125, L. 1911; Sec. 1, Ch. 26, Ex. L. 1919; Sec. 1, Ch. 4, L. 1927; Sec. 1, Ch. 142, L. 1953), relating

to the admission of patients to the sanitarium, was repealed by Sec. 2, Ch. 189, Laws 1959, effective March 7, 1959.

**80-210.1. Admission of patients to sanitarium.** The executive board of the sanitarium is hereby given the power and authority to receive any

person as a patient who is suffering from tuberculosis or what is commonly called miner's consumption. An applicant for admission to the sanitarium need not be a citizen or resident of the state of Montana for any length of time before he can be admitted as a patient. No person shall be admitted as a patient without certification by an examining licensed physician and surgeon that the applicant is suffering from tuberculosis or miner's consumption, such certification being in form and containing such information as determined necessary by the superintendent of the sanitarium. Applications with their certification shall be submitted to the health officer of the county where application is made or directly to the superintendent. Upon acceptance of a patient for admission to the sanitarium, the superintendent shall notify the referring physician and the state board of health. The medical staff of the sanitarium shall be the sole judge of who is afflicted with tuberculosis that may benefit by admission to the sanitarium.

Admission to the sanitarium shall be made in the order in which the name of the applicant shall appear upon an application book to be kept by the superintendent. An applicant's name may only be entered if his application is accompanied by the certificate of an examining physician. Residents of Montana shall be entitled to admission to the sanitarium before applicants who are not residents. Provided, however, that where the next patient in order is a man and the only accommodations available in the sanitarium are for women or children, then women and children shall be admitted in their proper order and vice versa.

**History:** En. Sec. 1, Ch. 189, L. 1959.

#### **Title of Act**

An act providing for the admission of patients to the Montana tuberculosis sanitarium by providing that any person may be admitted who is suffering from tuberculosis or miner's consumption; providing for applications and order of admission; repealing section 80-210, Revised Codes of Montana, 1947, as amended by chapter 142, Laws of 1953 and all acts and parts of acts in conflict therewith; and providing an effective date of this act.

#### **Repealing Clause**

Section 2 of Ch. 189, Laws 1959 read "That section 80-210, Revised Codes of Montana, 1947, as amended by chapter 142, Laws of 1953, and all acts and parts of acts in conflict herewith are hereby repealed."

#### **Effective Date**

Section 3 of Ch. 189, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

### **CHAPTER 4—FARMERS' INSTITUTES**

(Repealed—Section 1, Chapter 190, Laws of 1959)

#### **80-401 to 80-404. (1576 to 1579) Repealed.**

##### **Repeal**

These sections (Secs. 1, 4, 5, pp. 55, 56, L. 1901; Secs. 1, 2, 5, Ch. 105, L. 1903; Sec. 1, Ch. 8, L. 1909; Sec. 1, Ch.

133, L. 1921), relating to farmers' institutes; were repealed by Sec. 1, Ch. 190, Laws 1959.

### **CHAPTER 7—THE STATE PRISON**

- Section 80-705. Warden—appointment, salary and removal.  
 80-706. Duties of warden.  
 80-707.1. Appointment of custodial officers.  
 80-707.2. Qualifications and duties.  
 80-707.3. Probationary training.  
 80-707.4. Promotions—probationary period.



80-707.5. Suspension, demotion and discharge.  
80-720. Employment of convicts.

## 80-701. (12434) Board of state prison commissioners.

### Compiler's Note

Chapter 250 of Laws 1959 authorized a referendum on a measure to provide for the sale of bonds for the construction of buildings at the state prison. Such act is to be referred to the people at the general election in November, 1960. The act reads as follows:

An act to authorize the state of Montana to become indebted for the sum of five million dollars (\$5,000,000.00) in excess of the constitutional limitation of indebtedness and over and above any bonded indebtedness heretofore incurred or created and for which the state of Montana is now obligated for the construction and equipment of necessary buildings and other permanent improvements for the Montana state prison at Deer Lodge, Montana; providing for the issuance of bonds in the name of the state of Montana as evidence of such indebtedness and for the sale thereof; prescribing the form of such bonds and providing for a levy of an annual tax in excess of the amount prescribed by the constitution for state purposes sufficient to pay the principal thereof and the interest accruing thereon; and providing for a referendum of this act.

Section 1. That the state board of examiners of the state of Montana is hereby authorized and empowered to issue bonds in the name of the state of Montana, in an amount not exceeding five million dollars (\$5,000,000.00) in excess of the constitutional limitation of indebtedness and over and above any bonded indebtedness heretofore incurred or created and for which the state of Montana is now obligated, the money derived from the sale of said bonds to be used for the purposes of constructing and equipping necessary buildings and other permanent improvements for the Montana state prison at Deer Lodge, Montana.

Section 2. Such bonds shall be issued from time to time by the state board of examiners at such times and in such amounts as may appear to said state board of examiners of the state of Montana in the exercise of its judgment and discretion to be for the best interests of the state and necessary for the construction and equipment of necessary buildings and other permanent improvements for the Montana state prison.

Section 3. Each series of bonds provided for in this act shall be issued in such denominations, shall be dated, shall mature serially over a period of not to exceed twenty (20) years from the date thereof, and shall bear interest at a rate

or rates not exceeding four per cent (4%) per annum, payable semiannually, as may be determined by the state board of examiners; provided, however, that for each series of said bonds issued after the issuance of the first series thereof, the board of examiners shall so fix the interest payment dates that the interest thereon will become due and payable on the same dates as the interest on the first bonds shall become due and payable, and in order so to do the state board of examiners may provide that the first interest shall be due and payable at a date less than six (6) months after the date of the issuance of such series. Said bonds may be made redeemable before maturity, at the option of the state board of examiners, at such price or prices and upon such terms and conditions as may be fixed by the state board of examiners prior to the issuance of said bonds.

The bonds provided for in this act shall be payable as to both principal and interest at the office of the state treasurer of the state of Montana at Helena, Montana, or at the option of the holders thereof at the office of the fiscal agent of the state of Montana in the borough of Manhattan, city and state of New York, and shall be executed in the name of the state of Montana by the members of the state board of examiners under the great seal of the state of Montana. The coupons representing interest on said bonds shall be executed with the facsimile signatures of the members of the state board of examiners.

Section 4. The state board of examiners shall prescribe the form of said bonds, and the bonds of each series shall bear upon their face the words: "Montana state prison bonds of the state of Montana" with a letter or figure to designate the series thereof, and shall be registered in the office of the state treasurer. The state board of examiners of the state of Montana is hereby authorized and directed to issue and sell said bonds as provided for in this act in such manner as they shall deem for the best interests of the state and carrying out of the provisions of this act at such times within a period of five (5) years from and after the approval of this act as the said state board of examiners shall from time to time determine necessary for the purposes herein provided. No bond provided for herein shall be disposed of for less than its par value.

Section 5. All moneys derived from the issuance and sale of bonds authorized

by this act shall be paid into the state treasury and shall constitute a special fund for the construction and equipment of necessary buildings and other permanent improvements for the Montana state prison. Such moneys shall be expended only for the purposes herein expressly provided for and shall be disbursed by the state treasurer on warrants properly drawn against such fund by the state auditor pursuant to the orders of the state board of examiners.

Section 6. There shall be levied annually upon all property in the state of Montana subject to taxation an ad valorem tax upon each dollar of the taxable valuation of such property in excess of the amount prescribed by the constitution for state purposes sufficient to pay the interest accruing on said bonds as such interest shall fall due and to pay the principal of said bonds as such principal becomes due, said levy, however, not to exceed one (1) mill per annum until the indebtedness herein provided for shall have been fully paid and discharged. The tax when collected by the county treasurers of the several counties of the state shall be by them accounted to and paid into the state treasury of the state of Montana, and by the state treasurer placed in the "Montana state prison bond interest and redemption fund," which funds shall be used exclusively for the payment of principal and interest on said bonds as the same become due.

Section 7. There shall be a referendum on this act and the secretary of state is hereby required, and it is made his duty,

to submit this measure in accordance with the provisions of the constitution and the laws of the state of Montana applicable thereto to the people of the state for their approval or rejection at the general election to be held in November, 1960. The official ballot used in said election shall have printed thereon the title of this act and below the same shall be printed the words:

☐ FOR REFERENDUM NUMBER \_\_\_\_\_  
 \_\_\_\_\_Relating to the bond  
 issue for Montana State Prison

☐ AGAINST SAID REFERENDUM

Each qualified elector shall designate his preference by marking an "X" in the square opposite the proposition for which such elector desires to vote. The votes cast for and against the law above proposed shall be canvassed, determined and declared in the manner provided by the general election laws of the state.

Section 8. The cost of the bonds issued under this act and all fees, commissions, and the compensation of the architect or architects employed in the construction and to prepare plans shall be paid out of the proceeds of the bonds.

Section 9. If any parts of this act shall be declared by any court of competent jurisdiction to be unconstitutional such unconstitutionality shall not affect the validity of the remaining parts of this act.

Section 10. All acts and parts of acts in conflict herewith are hereby repealed.

Section 11. This act shall be in full force and effect from and after its passage and approval. Approved March 13, 1959.

**80-705. (12438) Warden—appointment, salary and removal.** A warden of the state prison shall be appointed by the governor subject to approval of the board of state prison commissioners, and such appointment must be transmitted to and approved by the senate. The warden of the state prison shall be a person trained through education and experience in a managerial capacity in a penal institution. The salary of the warden shall be not less than eight thousand four hundred dollars (\$8,400.00) per year, payable in monthly installments.

The warden shall have a place of residence at the prison for himself and his family, free of charge, and he shall receive all utilities and other necessary items of expense incident to the maintenance thereof. Food and other provisions available at the prison commissary shall be furnished without cost to the warden for consumption and use at said residence, provided that an accounting of such food and provisions so consumed, shall be made annually to the state board of prison commissioners.

The warden shall be subject to removal by the state board of prison commissioners at any time for misfeasance, nonfeasance or malfeasance in office, but before he is so removed formal charges in writing must be preferred and the warden given opportunity to appear and defend himself against any such charges. When charges shall have been preferred, ask-

ing the removal of the warden, notice of the time and place of hearing of said charges shall be served upon him at least ten (10) days prior to the day set for the hearing; provided, however, that when such charges have been preferred, the state board of prison commissioners shall have the power and authority to suspend the warden until after the determination of the charges preferred against him.

The board shall conduct an open hearing to determine whether the warden should be removed. They shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers and other evidence at such hearing, and for that purpose to issue subpoenas and cause the same to be served and executed in any part of the state. The warden shall be entitled to be confronted with the witnesses against him and he, or his counsel, shall have an opportunity to cross-examine the same, and to introduce testimony in his own behalf. Within fifteen (15) days after such hearing the board shall render its decision in writing. If the effect of the decision is to exonerate the warden, he shall be entitled to reimbursement for any loss in salary caused by the charges against him.

Compulsory retirement age for the warden shall be sixty-five (65). Upon reaching compulsory retirement age, however, the warden in office may be retained beyond that age by the state board of prison commissioners on a year to year basis.

**History:** En. Sec. 2954, Pen. C. 1895; re-en. Sec. 9720, Rev. C. 1907; amd. Sec. 1, Ch. 11, L. 1913; re-en. Sec. 12438, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1957; amd. Sec. 1, Ch. 58, L. 1959.

#### Amendments

The 1957 amendment raised the salary of the warden from \$4,000 to \$7,500 per year and the monthly installment payment from \$333.33 to \$625.

The 1959 amendment, in the first sentence, inserted the words "subject to approval of the board of state prison commissioners"; deleted a former second sentence which read "The tenure of office of the appointee shall be for a period of four (4) years from the date of appointment and until his successor has been appointed and qualified"; added the present second

sentence; raised the salary from \$7,500 to \$8,400; added the second paragraph; substituted "ten (10) days" for "five (5) days" in the third paragraph and added the last two paragraphs.

#### Repealing Clauses

Section 2 of Ch. 61, Laws 1957 and Sec. 2 of Ch. 58, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### Effective Dates

Section 3 of Ch. 61, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

Section 3 of Ch. 58, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 26, 1959.

**80-706. (12439) Duties of warden.** Except as otherwise provided by law, the warden has power to appoint and remove all necessary guards and assistants, in and about the prison, subject to the approval of the board as to the number appointed.

**History:** En. Sec. 2955, Pen. C. 1895; re-en. Sec. 9721, Rev. C. 1907; re-en. Sec. 12439, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1959. Cal. Pen. C. Sec. 1578.

#### Amendment

The 1959 amendment added the words "Except as otherwise provided by law."

#### Repealing Clause

Section 2 of Ch. 71, Laws 1959 repealed all acts or parts of acts in conflict therewith.



**80-707.1. Appointment of custodial officers.** In the performance of his duties of superintending prison discipline and prison labor, the warden shall be assisted by a staff of custodial officers, to be composed of probationary correctional officers, correctional officers, lieutenants and captains. They shall be appointed by the warden, in such numbers as he may deem necessary, but subject to the approval of the board of state prison commissioners as to the number appointed.

**History:** En. Sec. 1, Ch. 242, L. 1959.

**Title of Act**

An act providing for the appointment of custodial officers to assist the warden in the performance of his duties in superintending prison discipline and prison labor; providing for the supervision and control over such employees by the warden; providing for various ranks within

such class of employees; providing for a period of probationary service and training in the respective ranks; providing for the suspension, demotion and discharge of such employees, and for an appeal from any such action to the board of state prison commissioners; repealing all acts or parts of acts in conflict herewith; and providing for the effective date of the act.

**80-707.2. Qualifications and duties.** All custodial officers must be citizens of the United States and a resident of Montana for one year. Their duties, and the respective duties of the various ranks, shall be as outlined and defined in writing by the warden. They shall be under the general supervision and control of the warden at all times.

**History:** En. Sec. 2, Ch. 242, L. 1959.

**80-707.3. Probationary training.** Every person appointed to serve as a custodial officer, except those employed at the state prison at the time this act becomes effective, shall assume the rank of probationary correctional officer, and shall be placed under probationary training and service for a period of six (6) months. At the end of the six (6) months period, the warden must either promote such person to the rank of correctional officer, or discharge such person from service.

**History:** En. Sec. 3, Ch. 242, L. 1959.

**80-707.4. Promotions—probationary period.** All promotions and appointments to the rank of lieutenant or captain shall be made by the warden. All such promotions and appointments shall be made from the prison staff and on the basis of merit. All lieutenants and captains shall be placed under probationary training and service for a period of six (6) months. At the end of the six (6) months period, the warden may retain such person in such rank or reinstate him in his previous rank without prejudice.

**History:** En. Sec. 4, Ch. 242, L. 1959.

**80-707.5. Suspension, demotion and discharge.** Every person employed or appointed and designated as captain, lieutenant or correctional officer under and pursuant to the provisions of this act, except as above provided, shall continue in service and hold his position without demotion until suspended, demoted or discharged in the manner hereinafter provided, for one or more of the following causes:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(b) Gross neglect of duty or wilful violation or disobedience of orders or regulations;

(c) Drinking intoxicating liquor, or being under the influence thereof, while on duty;

(d) Sleeping while on duty;

(e) Incapacity, or partial incapacity, materially affecting the employee's ability to perform his official duties;

(f) Gross inefficiency in performing duties;

(g) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate;

(h) Wilful disobedience of rules and regulations governing the conduct and discipline of custodial officers.

Any charge brought against any such employee must be in writing and signed and sworn to by the person making the same. It shall be filed with the warden, and a copy of the charges shall be served upon the accused employee. The warden shall make an investigation of any charge or charges against an accused employee, upon the filing thereof, and if he finds that any such charge is true, he may punish the offending party by reprimand, suspension without pay, demotion or dismissal, at the same time giving his reasons in writing to the board. Suspension shall be without pay and for a period not to exceed twenty (20) days. If the warden finds that such charges are false, he shall so notify the accused employee in writing.

Any employee who is so suspended, demoted or dismissed may appeal to the board of state prison commissioners by filing with such board a written request therefor within ten (10) days after he is notified of the warden's decision. It shall be the duty of the board, within thirty (30) days after the filing of such request, to conduct an open hearing upon said appeal. The board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers and other evidence at such hearing, and for that purpose to issue subpoenas and cause the same to be served and executed in any part of the state. The accused employee shall be entitled to be confronted with the witnesses against him, and he, or his counsel, shall have an opportunity to cross-examine the same, and to introduce testimony and summon witnesses in his own behalf.

Within fifteen (15) days after such hearing the board shall render its decision in writing. It shall file the same in its office and with the warden, and shall serve a copy thereof upon the accused employee. If the effect of the decision is to exonerate the accused employee, he shall be entitled to reinstatement and to reimbursement for any loss in salary caused by the charges against him.

**History:** En. Sec. 5, Ch. 242, L. 1959.

**Effective Date**

**Repealing Clause**

Section 6 of Ch. 242, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Section 7 of Ch. 242, Laws 1959 read "This act shall be in full force and effect from and after July 1, 1960."

**80-720. (12447) Employment of convicts.** If, at any time, the board is of the opinion that it would be to the interest of the state to employ any portion of the prisoners, either within or without the walls or enclosures of the state prison, either in improvement of the public grounds or buildings or otherwise where they may be profitably employed, it has power to so employ such labor; it must, in such case, direct the warden accordingly in writing, and cause a record of such order to be entered at length on the records of the board. The board may, upon recommendation of the warden of the Montana state prison, make payments of money to any inmate of the state prison as an incentive to satisfactorily perform his or her work in the various prison industries. It shall be the duty of the board to authorize the payment of wages ranging from two cents (2¢) to fifty cents (50¢) per day depending on job grades. All jobs shall be graded according to the following criteria:

- (a) Knowledge
- (b) Skill
- (c) Physical effort
- (d) Responsibility for equipment and materials
- (e) Regard for safety of others
- (f) Working conditions.

All wages paid hereunder shall be paid from the "industrial revolving fund" as established by section 94-35-152.13, Revised Codes of Montana, 1947.

**History:** En. Sec. 2961, Pen. C. 1895; re-en. Sec. 9729, Rev. C. 1907; re-en. Sec. 12447, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1959.

**Repealing Clause**

Section 2 of Ch. 14, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Amendment**

The 1959 amendment added everything following the first sentence of this section.

**80-721 to 80-724. (12447.1 to 12447.4) Repealed.**

**Repeal**

These sections (Secs. 1 to 4, Ch. 152, L. 1927), relating to the operation of a fac-

tory for wearing apparel, were repealed by Sec. 1, Ch. 15, Laws 1959.

**80-725 to 80-729. (12447.5 to 12447.9) Repealed.**

**Repeal**

These sections (Secs. 1 to 5, Ch. 173, L. 1929), relating to the operation of a tan-

nery at the state prison, were repealed by Sec. 1, Ch. 15, Laws 1959.

**80-730. (12447.10) Repealed.**

**Repeal**

This section (Sec. 1, Ch. 196, L. 1931; amd. Sec. 1, Ch. 94, L. 1935), relating to

the manufacture of brick at the state prison, was repealed by Sec. 1, Ch. 15, Laws 1959.

**80-734. (12450) Repealed.**

**Repeal**

This section (Sec. 2964, Pen. C. 1895), relating to money received for prison la-

bor, was repealed by Sec. 1, Ch. 15, Laws 1959.



## TITLE 81—STATE LANDS

- Chapter 4. Leasing of agricultural lands—grazing lands and city and town lots, 81-433, 81-433.1.  
9. Sale of state lands, 81-908.  
14. State forests—forester—timber sales—fire wardens, 81-1403.  
17. Oil and gas on state lands—disposal of, 81-1709.

### CHAPTER 4—LEASING OF AGRICULTURAL LANDS—GRAZING LANDS AND CITY AND TOWN LOTS

Section 81-433. Formula for fixing annual rental.  
81-433.1. Additional computation for specified period.

#### 81-401. Policy of state as to appraisal and leasing state land.

##### References

Cited and applied in *Ivins v. Hardy*, —  
M —, 333 P 2d 471, 476.

**81-433. Formula for fixing annual rental.** The state board of land commissioners shall establish the per annum rental rate per section of all grazing lands which are the property of the state of Montana upon the animal-unit-month basis as hereinafter provided.

In fixing the minimum annual rental per section, the following formula shall be used:

The proportional relationship between the average price per pound of beef cattle on the farm in Montana during the period between the year 1938 and the year 1947, inclusive of both said years, and the average grazing fee per animal-unit-per-month for said period shall be applied to the average price per pound of beef cattle on the farm in Montana for three years next preceding the fixing of the rental.

The resulting figure shall be multiplied by, first, the carrying capacity of the land, and second, by twelve (12) so as to bring the rental from a monthly to an annual figure.

The average price per pound of beef cattle on the farm in Montana during the said period between 1938 and 1947, inclusive, to be used in the above formula, is hereby declared to be ten and one-half cents (\$.105).

The average grazing fee per animal-unit-per-month (herein abbreviated to A. U. M.) for the said period between 1938 to 1947, inclusive, to be used in the above formula, is hereby declared to be twenty-four cents (24¢).

The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the commissioner of state lands and investments made pursuant to section 81-404, Revised Codes of Montana, 1947, originally enacted as section 4 of chapter 207 of the Laws of 1945.

The average price per pound of beef cattle on the farm in Montana for the three years next preceding the fixing of the rental, to be used in the above formula, shall be taken from statistics published by the bureau of agricultural economics of the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time.

By way of an example of the computation of minimum rental on grazing land by use of the factors prescribed herein, and taking,

- (a) a section of land, with
- (b) a carrying capacity of sixteen (16) animal-units, and
- (c) taking the average price per pound of beef cattle on the farm in Montana as seventeen and thirty hundredths cents (\$.1730) for the three years next preceding the fixing of the rental, in compliance with the formula prescribed herein, such factors shall be used and applied as follows:

Price per pound for cattle from 1938 to 1947, inclusive	A. U. M. Rental	Average price per pound for cattle for 1956-1957- 1958	Rental per A. U. for one month
--	--------------------	---	---

.105 cents is to .240 cents as .1730 cents is to X or .3954 cents

The resulting factor of .3954 cents (rental per animal-unit for one month) in the foregoing example is hereby rounded to forty cents (40¢) per animal-unit for one month to facilitate performance of the computation executed as follows:

.40 cents for one animal-unit-for-one-month  
times

12 months

80

40

\$4.80 rental for one animal-unit for one year

times 16 animal-unit carrying capacity for the  
section of land

\$28.80

4.80

results in \$76.80 as the minimum rental for the next  
following year for the section of grazing land.

**History:** En. Sec. 2, Ch. 190, L. 1949;  
amd. Sec. 1, Ch. 229, L. 1951; amd. Sec.  
1, Ch. 284, L. 1959.

**Amendment**

The 1959 amendment made numerous  
changes in this section. For section prior  
to amendment see parent volume.

**81-433.1. Additional computation for specified period.** For the period beginning after February 28, 1960 and ending February 28, 1961, 10 cents per animal unit shall be added to the animal unit figure resulting from the formula as described in this act to determine the rental fee for state lands during this period. From and after February 28, 1961 the formula contained in section 1 [81-433] shall apply.

**History:** En. Sec. 2, Ch. 284, L. 1959.

**Repealing Clause**

Section 3 of Ch. 284, Laws 1959 re-  
pealed all acts and parts of acts in con-  
flict therewith.

**Effective Date**

Section 4 of Ch. 284, Laws 1959 read  
"This act shall be in full force and effect  
from and after the twenty-eighth day of  
February, 1960."

## CHAPTER 9—SALE OF STATE LANDS

Section 81-908. Who may purchase and how much.

**81-908. (1805.71) Who may purchase and how much.** State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of twenty-one (21) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands acquired by the state in connection with the foreclosure of its mortgages, or to lands within a federal irrigation project wherein the Congress of the United States of America now or hereafter authorizes water to be furnished to an area exceeding one hundred and sixty (160) irrigable acres.

State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in this section for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

The title to any state lands which have been heretofore purchased by a sovereign state or a board of trustees or public corporation, agency or political subdivision thereof qualified under the provisions of this act is hereby ratified and confirmed.

**History:** En. Sec. 71, Ch. 60, L. 1927; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959.

**Effective Date**

Section 2 of Ch. 10, Laws 1959 provided the act should be in effect on and after its passage and approval. Approved February 4, 1959.

**Amendment**

The 1959 amendment added all that part of the first paragraph beginning with the words "or to lands within a federal."

CHAPTER 14—STATE FORESTS—FORESTER—TIMBER SALES  
—FIRE WARDENS

Section 81-1403. State forester—appointment—compensation—term—assistants—bond.

**81-1403. (1830.3) State forester—appointment—compensation—term—assistants—bond.** The governor, by and with the advice and consent of the senate, shall appoint a state forester to have general charge of all the state's forests. He shall be technically trained and experienced in forestry and a graduate of an accredited forestry school, and his salary shall not exceed seven thousand dollars (\$7,000.00) per annum, at the discretion of the state land board, together with the actual, necessary expenses while engaged in outside work in connection with his office and its



duties as defined by law and the regulations of the state board of land commissioners and the state board of forestry. Such expenses shall be payable monthly from the state's general fund and/or the appropriations made to those other boards to which he, by law, has been designated secretary or executive officer. His term of office shall be for four (4) years. With the consent and approval of the state board of land commissioners the state forester shall appoint and fix the salaries and expenses of such office help, district foresters, fire wardens, cruisers, scalers, slash disposal men, and such other trained and qualified assistants as may be necessary in the administration of the state forests and the forested lands within the state. Provided, however, that consent and approval of such appointments by any board shall be restricted to those appointments made for the purposes of that board as defined by law. He shall give a satisfactory bond to the state of Montana in the sum of ten thousand dollars (\$10,000.00) as a guarantee for the faithful performance of his duties.

**History:** En. Sec. 3, Ch. 179, L. 1925; amd. Sec. 1, Ch. 161, L. 1949; amd. Sec. 1, Ch. 192, L. 1953; amd. Sec. 1, Ch. 28, L. 1955; amd. Sec. 1, Ch. 94, L. 1957.

#### **Amendment**

The 1957 amendment raised the salary

of the state forester from \$6,000 to \$7,000 per annum.

#### **Repealing Clause**

Section 2 of Ch. 94, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### **CHAPTER 17—OIL AND GAS ON STATE LANDS—DISPOSAL OF** Section 81-1709. Bond of lessees.

#### **81-1702. (1882.2) Area to be leased—limitations—term of leases, etc.**

##### **References**

Cited or applied in State ex rel. Strandberg v. State Board of Land Comms., 131 M 65, 307 P 2d 234, 235.

#### **81-1704. (1882.4) Royalty—time for payment—computation.**

##### **Constitutionality**

This section is not unconstitutional on the grounds that it does not obtain the full market value of the estate or interest disposed of as required by the constitution. State ex rel. Strandberg v. State Board of Land Comms., 131 M 65, 307 P 2d 234. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

##### **Royalty Rate**

When oil lands are leased on a royalty basis and a cash bonus, the bonus constitutes rental for an estate or interest in the land and the legislature in leasing oil lands is under obligation to obtain the full market value of the estate or interest disposed of on a rental basis, as well as for the sale of the land itself. State ex rel. Strandberg v. State Board of Land Comms., 131 M 65, 307 P 2d 234, 237. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

Where in the leasing of lands for oil and gas, there was a bid carrying a royal-

ty of 16⅓% with a bonus of \$39,040 and another bid carrying a royalty of 12½% with a bonus of \$68,000, the board of land commissioners was not authorized to accept the bid carrying the royalty of 16⅓% since the legislature has the responsibility of determining the method of arriving at the market value of leases, and by this section the legislature has determined that the royalty basis shall be 12½%. In the instant case it is impossible to determine whether the bid carrying the higher royalty but lesser bonus to be better than the bid carrying the 12½% royalty but a higher bonus, in advance of drilling. State ex rel. Strandberg v. State Board of Land Comms., 131 M 65, 307 P 2d 234, 236. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

Under the constitution it is the legislature and not the land board that must fix the rules governing the sale and leasing of state land, and the method of arriving at the market value thereof. State

ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 236. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

**81-1709. (1882.9) Bond of lessees.** The state board of land commissioners shall require lessees of oil and gas leases and assigns thereof to furnish bonds to the state in form and substance prescribed by law or by regulations of the board and in amount, or amounts, adequate to indemnify the state against loss, damage or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease or assignment thereof, including the payment of any money penalties fixed by the board; provided, that no bond in excess of twenty thousand dollars (\$20,000.00) shall be required under any one lease for any one year; and provided further that any lessee of oil and gas leases or any assignee of such leases, may, at his discretion, furnish one bond in a sum to be fixed by the board not to exceed fifty thousand dollars (\$50,000.00) covering all leases in which any interest is acquired, in which event separate bonds relating to individual leases or interests therein shall not be required.

**History:** En. Sec. 9, Ch. 108, L. 1927; all acts and parts of acts in conflict therewith. amd. Sec. 1, Ch. 186, L. 1957.

#### **Amendment**

The 1957 amendment added the "and provided further clause."

#### **Effective Date**

Section 3 of Ch. 186, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

#### **Repealing Clause**

Section 2 of Ch. 186, Laws 1957 repealed

**81-1715. (1882.15) Advertising for bids on re-lease of producing oil, etc.**

#### **References**

Cited or applied in State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 235.

## TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

- Chapter 1. State controller, 82-109, 82-110, 82-112.
10. Examiner, state, 82-1008, 82-1014 to 82-1016.
  11. Examiners, state board of—state printing contract and supplies, 82-1109.
  12. Fire marshal, state, 82-1231.
  13. Governor—powers—records—secretary, 82-1309, 82-1310.
  15. Hail insurance, state board of, 82-1507.
  21. Intergovernmental cooperation, 82-2112, 82-2113.
  31. State agency for surplus property, 82-3102, 82-3105, 82-3106.

### CHAPTER 1—STATE CONTROLLER

- Section 82-109. Duties of controller—expenditure control.
- 82-110. Duties of controller—to act with state auditor and state examiner—uniform accounting system—examinations.
- 82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid—director of budget to first submit budget to governor.

**82-109. Duties of controller—expenditure control.** (a) The controller shall establish a system of financial control to the end that the functioning of the various departments of the state may be improved, that duplications of work done by different state departments and employees may be eliminated, the public service improved, and the cost of government reduced.

(b) It shall be the duty of the controller to apply expenditures against cash funds wherever possible before using the general fund appropriations.

(c) The controller may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, department, bureau, commission, institution or agency. The amount of the respective appropriation made by the legislative assembly shall then, except with respect to items of capital outlay and repairs and replacement, be made available to such office, department, bureau, commission, institution or agency in quarterly allotments, provided, however, that the quarterly allotment shall be based on the requirements of that office, department, bureau, commission, institution or agency during that quarter based on previous experience of that office, department, bureau, commission, institution and agency and not on a pro rata quarterly basis.

**History:** En. Sec. 4, Ch. 194, L. 1951;  
amd. Sec. 1, Ch. 101, L. 1953; amd. Sec.  
8, Ch. 158, L. 1959.

#### Amendment

The 1959 amendment deleted most of former subd. (a). For previous text see parent volume.

**82-110. Duties of controller—to act with state auditor and state examiner—uniform accounting system—examinations.** (a) The controller, acting with the state examiner, shall prescribe and install uniform accounting and reporting for the several state boards, bureaus, departments, commissions and institutions in addition to those enumerated in section 82-102 hereof, showing the receipt, use and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof which shall be submitted to the respective heads of such boards, bureaus, departments, com-



missions and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the controller for inspection by the members of the legislative assembly.

(b) The controller shall receive copies of all audits and reports of the state examiner relating to all state departments, boards, bureaus, institutions and agencies and, without duplicating work done in preparing such audits and reports, he shall have the power and it shall be his duty to examine into all financial affairs of every state board, commission, bureau, department and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof, and for the purpose of enabling him to properly perform any of the duties imposed upon him by this act.

(c). \* \* \* [Same as parent volume.]

(d). \* \* \* [Same as parent volume.]

**History:** En. Sec. 6, Ch. 194, L. 1951; "state auditor and" where they appeared  
amd. Sec. 9, Ch. 158, L. 1959. before "state examiner" near the begin-  
ning of each of subds. (a) and (b).

**Amendment**

The 1959 amendment deleted the words

**82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid—director of budget to first submit budget to governor.** Whenever any agency of the federal government shall require as a condition to obtaining federal aid that the state agency intrusted with the administration of such aid shall submit a budget of the contemplated expenditures for administrative purposes, the proposed budget for such expenditures shall, before it is submitted to the federal authorities for approval, first be submitted by such state agency to the director of the budget. The director of the budget shall then transmit said budget to the governor who shall approve the same or shall modify or alter it so as to meet his approval and shall submit the budget as approved by him to the legislative assembly; when the legislative assembly is not in session and additional and unanticipated federal aid becomes available, requiring an amended and/or supplemental appropriation request, then any agency, department or institution receiving such federal aid shall submit said amended and/or supplemental administrative appropriation request through the director of the budget to the governor for his approval before submission to the appropriate federal agency.

**History:** En. Sec. 1, Ch. 210, L. 1953;  
amd. Sec. 10, Ch. 158, L. 1959.

**Amendment**

The 1959 amendment, at the end of the first sentence, substituted "by such state agency to the director of the budget" for "to the state controller in conformity with section 82-109(a)"; substituted the portion of the second sentence preceding the semicolon therein for "The state controller shall then transmit said budget

to the legislative assembly for approval" and substituted "director of the budget" near the end of the section for "state controller."

**Repealing Clause**

Section 11 of Ch. 158, Laws 1959 read "That sections 79-1002, 79-1003, 79-1004, 79-1004.1, 79-1005, and 79-1010, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

## CHAPTER 4—ATTORNEY GENERAL

**82-401. (199) General duties.****Effect of Opinion**

While executive construction of the law, acquiesced in by the legislative assembly, is not binding on the court, yet such in-

terpretation is persuasive and will be upheld if not erroneous. *State ex rel. Ebel v. Schye*, 130 M 537, 305 P 2d 350, 353.

## CHAPTER 10—EXAMINER, STATE

- Section 82-1008. Examination of accounts of cities, towns and certain school districts.  
 82-1014. Examination of accounts and books of units of university of Montana.  
 82-1015. Duty of fiscal officers and other employees to aid in examination.  
 82-1016. Report of examination and audit.

**82-1008. (215) Examination of accounts of cities, towns and certain school districts.** The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one (1) examination each year of the books and accounts of all incorporated cities and towns.

The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers, provided, however, that the trustees of any school district must, during the month of June of each calendar year, notify the state examiner if such examination will be required, in which event it shall be the duty of the state examiner to make an examination of such school district during the fiscal year following receipt of said notice.

For such examination a fee of sixty dollars (\$60) per day per man shall be charged and said fee must be paid by such district into the state treasury and the state treasurer shall accredit such payment to the special examiners' fund.

In lieu of the examination by the state examiner as above provided, said school districts may provide for the examination of the books and accounts thereof by a qualified public accountant of the state of Montana.

A copy of the examiner's or accountant's report shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district, and any citizen of the state of Montana shall have the right to inspect, copy out and publish any of the facts therein contained.

**History:** En. Sec. 1, Ch. 84, L. 1913; re-en. Sec. 215, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1937; amd. Sec. 1, Ch. 169, L. 1955; amd. Sec. 1, Ch. 137, L. 1959.

**Amendment**

The 1959 amendment increased the fee set out in the third paragraph from \$30 to \$60 per day per man, deleted the words "together with actual transportation ex-

pense" which followed "per day per man" in the third paragraph, and inserted in the third paragraph the words "shall be charged and the said fee."

**Repealing Clause**

Section 2 of Ch. 137, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**82-1014. Examination of accounts and books of units of university of Montana.** The state examiner is hereby directed to examine and audit the accounts and books of the various units of the university of Montana system for the biennium ending June 30, 1959, and each biennium thereafter, and has authority to employ such clerical, accounting and other personnel as may be deemed necessary by him to carry out the provisions of this act. Such examination shall include, within reason, but not limited to, the verification of all fees collected and their disposition, the tabulation of expenditures made from each of the appropriations granted by the legislative assembly, the consideration of all claims and expenditures as to their fund allocation and validity, the analysis of the sources of funds applied to the redemption of revenue bonds outstanding, the segregation of expenses allocated to buildings and activities designated as self liquidating, and any investigation as may be requested by the Montana state board of education.

**History:** En. Sec. 1, Ch. 279, L. 1959.

**Title of Act**

An act directing the state examiner to examine the accounts and books of the

university system for the biennium ending June 30, 1959 and each biennium thereafter; repealing all acts and parts of acts in conflict therewith; and providing for an effective date.

**82-1015. Duty of fiscal officers and other employees to aid in examination.** It shall be the duty of the fiscal officer and other employees of each educational unit to furnish to the state examiner or his representative, when requested by him, all information, records, and books of account required in the course of the examination, and to render such assistance as may be required.

**History:** En. Sec. 2, Ch. 279, L. 1959.

**82-1016. Report of examination and audit.** The state examiner shall report to the governor and the state board of education of the state of Montana, the results of such examination and audit, which report shall be available to the legislative council and legislative assembly.

**History:** En. Sec. 3, Ch. 279, L. 1959.

**Effective Date**

Section 5 of Ch. 279, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 17, 1959.

**Repealing Clause**

Section 4 of Ch. 279, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 11—EXAMINERS, STATE BOARD OF—STATE PRINTING CONTRACT AND SUPPLIES**

Section 82-1109. Claims for which appropriations have been made.

**82-1109. (238) Claims for which appropriations have been made.** Any person having a claim against the state, for which an appropriation has been made, may present the same to the state board of examiners in the form of an account or petition, and the secretary of the board must date, number, and file such claim, provided, however, that all claims for which appropriations have been made must be transmitted to the said board not later than twenty (20) days after the close of each fiscal year, and claims submitted more than twenty (20) days after the close of each fiscal year



and not paid as provided by subsection 3 of section 59-701, Revised Codes of Montana, 1947, by reason of exhausted appropriation shall be transmitted to the next succeeding legislative assembly in the same manner as provided in section 82-1119, Revised Codes of Montana, 1947. The said board must allow or reject claims submitted not later than twenty (20) days after the close of each fiscal year in the order of their presentation.

All claims against the state shall contain the following statement: "I certify that this claim is correct and just in all respects, and that payment or credit has not been received." Claims need not be verified by affidavit.

**History:** Sec. 232, Rev. C. 1907; re-en. Sec. 238, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1953; amd. Sec. 1, Ch. 110, L. 1955; amd. Sec. 1, Ch. 21, L. 1957. See also history of Sec. 82-1101.

#### **Amendment**

The 1957 amendment added the second paragraph.

### **CHAPTER 12—FIRE MARSHAL, STATE**

Section 82-1231. Tax on fire insurance premiums for maintenance of state fire marshal's office.

**82-1231. (2761) Tax on fire insurance premiums for maintenance of state fire marshal's office.** Each insurer authorized to effect insurance on risks enumerated in subsection two of section 11-1919, doing business in this state shall pay to the state auditor and commissioner of insurance ex-officio, during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of one-fourth of one per cent ( $\frac{1}{4}$  of 1%) on the fire portion of the direct premiums on such risks received during the calendar year next preceding, after deducting cancellations and return premiums.

**History:** En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959.

40-1302" where they followed "required by law to be paid by it."

#### **Amendment**

The 1959 amendment substituted "insurer" for "insurance company" at the beginning of the section; substituted "subsection two of section 11-1919" for "paragraph one of section 40-1409"; substituted "taxes on premiums" for "license fees" and deleted the words "provided in section

#### **Repealing Clause**

Section 2 of Ch. 182, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 182, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

### **CHAPTER 13—GOVERNOR—POWERS—RECORDS—SECRETARY**

Section 82-1309. Enemy attack upon United States and governor and those in line for succession unable to act—calling of emergency session of state senate—election of president pro tempore to assume governorship

**82-1310. Emergency temporary seat of government—designation.**

**82-1309. Enemy attack upon United States and governor and those in line for succession unable to act—calling of emergency session of state senate—election of president pro tempore to assume governorship.** If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate and speaker of the house are killed or rendered unable to serve as governor, the chairman of the

board of county commissioners of the state's most populous county, as determined by the last preceding official United States census shall have the power and it shall be his duty forthwith to call an emergency session of the state senate at any safe location within the state for the purpose of electing a president pro tempore who shall then assume the office of governor. Should such chairman of the board of county commissioners of the most populous county be dead or unable to act, the chairman of the board of the next most populous county shall exercise the power granted by this section.

**History:** En. Sec. 1, Ch. 148, L. 1959.

**Title of Act**

An act to provide for emergency succession to the office of governor in the

event of enemy attack upon the United States and to provide for selection of an emergency seat of government in case of such attack; providing for a repealing clause and an effective date.

**82-1310. Emergency temporary seat of government—designation.** If, because of an enemy attack upon the United States, the city of Helena should be rendered unsafe, the governor may designate any safe location within the state as an emergency temporary seat of government until such time as the city of Helena is again safe for occupancy.

**History:** En. Sec. 2, Ch. 148, L. 1959.

**Effective Date**

**Repealing Clause**

Section 3 of Ch. 148, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Section 4 of Ch. 148, Laws 1959 provided the act should be in effect immediately after its passage and approval. Approved March 7, 1959.

## CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

Section 82-1507. Scope and object of levy—reserve fund.

**82-1507. (352) Scope and object of levy—reserve fund.** (1) In making the levy provided in the preceding section the state board of hail insurance shall provide for:

1. The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.

2. For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve fund.

3. For the maintenance of the reserve fund, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants and losses as the same shall be settled and adjusted by the said board including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

4. If at the end of any hail insurance season the state board of hail insurance determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made, and which funds are in excess of the need for the payment of losses and expenses and maintenance of the reserve fund, the state board of hail insurance may, at its discretion, refund to the farmers insured for the said year, on a pro rata or percentage basis the excess of the said fund. A list containing the names, addresses, and other information that the said board determines necessary shall be presented for the approval of the

state board of examiners of the state of Montana. The state auditor of the state of Montana is hereby authorized to draw and issue warrants for the payment of the same.

(2) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve fund if conditions permit, it shall not increase the levy enough in any year so that such addition to the reserve fund will exceed five per cent (5%) of the maximum risk written for that year and provided further, that the reserve fund shall not exceed the amount of one million two hundred thousand dollars (\$1,200,000.00).

(3) The reserve fund hereby created shall be a continuous fund and the state board of hail insurance is hereby granted the power to draw from said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest and losses, and provided further, that whenever there are no unpaid losses for prior years and whenever in any one (1) year the cost of administration, interest and losses for the current year shall be less than the sum of sixty cents (60¢) per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the state board of hail insurance shall not draw on the reserve fund for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration shall exceed the amount of the estimate made by the state board of hail insurance.

**History:** En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R. C. M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957.

#### **Repealing Clause**

Section 2 of Ch. 20, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Amendment**

The 1957 amendment added subsec. 4 to subd. (1).

## **CHAPTER 21—INTERGOVERNMENTAL COOPERATION**

Section 82-2112. Legislative council—function—commission on interstate cooperation—delegations and committees.

82-2113. Council of state governments declared joint governmental agency.

**82-2101 to 82-2111. Repealed.**

#### **Repeal**

These sections (Secs. 1 to 11, Ch. 86, L. 1937), relating to committees on inter-

governmental cooperation, were repealed by Sec. 1, Ch. 72, Laws 1959.

**82-2112. Legislative council—function—commission on interstate cooperation—delegations and committees.** It shall be a function of the legislative council to:

(1) Carry forward the participation of the state of Montana as a member of the council of state governments, and the legislative council is hereby designated as the Montana commission on interstate cooperation;

(2) Encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and



otherwise, with the other states, with the federal government, and with local units of government;

(3) Establish such delegations and committees as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Members of such delegations and committees shall serve without pay, but they may be reimbursed for expenses as provided by law;

(4) Endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation, and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process.

**History:** En. Sec. 2, Ch. 72, L. 1959.

#### **Title of Act**

An act to repeal sections 82-2101, 82-2102, 82-2103, 82-2104, 82-2105, 82-2106, 82-2107, 82-2108, 82-2109, 82-2110, and 82-2111 of the Revised Codes of Montana, 1947, relating to the establishment of the Montana commission on intergovernmental cooperation, its duties, functions, membership, reports and compensation; to provide the legislative council shall be a member of the commission on interstate cooperation; to provide that the state of Montana shall be a member of the council of state governments; to provide that the council of state governments is to be a joint governmental agency of the state

of Montana and of other states which cooperate through it; to provide that the legislative council shall establish such delegations and committees as may be advisable, providing that members of said delegations and committees shall serve without pay, but may be reimbursed for expenses as provided by law; and providing a repealing clause.

#### **Repealing Clause**

Section 1 of Ch. 72, Laws 1959 read "Sections 82-2101, 82-2102, 82-2103, 82-2104, 82-2105, 82-2106, 82-2107, 82-2108, 82-2109, 82-2110, and 82-2111 of the Revised Codes of Montana, 1947, be, and the same are hereby repealed."

**82-2113. Council of state governments declared joint governmental agency.** In order to facilitate such cooperation, the council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

**History:** En. Sec. 3, Ch. 72, L. 1959.

#### **Repealing Clause**

Section 4 of Ch. 72, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### **CHAPTER 31—STATE AGENCY FOR SURPLUS PROPERTY**

- Section 82-3102. Authority and duties of the state agency for surplus property.  
 82-3105. Superintendent of public instruction—delegating powers and duties—bonding of employees of surplus property agency.  
 82-3106. Officers or employees authorized to secure transfer of surplus property.

#### **82-3102. Authority and duties of the state agency for surplus property.**

(a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administra-

tive Services Act of 1949, as amended, hereinafter referred to as the "act," such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes of education, public health or civil defense, including research for any such purpose, and for such other purposes as may now or hereafter be authorized by federal law; (2) to warehouse such property; and (3) to distribute such property within the state to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which have been held exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code of 1954 within the state, to civil defense organizations of the state, or political subdivisions and instrumentalities thereof, which are established pursuant to state law, and to such other types of institutions or activities as may now be or hereafter become eligible under federal law to acquire such property.

(b) The state agency for surplus property is hereby authorized to receive applications from eligible institutions for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate health or educational authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act.

(c) For the purpose of executing its authority under this act, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary; and take such other action as is deemed necessary and suitable, in the administration of this act, to assure maximum utilization by and benefit to health, educational and civil defense institutions and organizations within the state from property distributed under this act.

(d) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as clearing house of information for the public and private nonprofit institutions, organizations and agencies referred to in subpara-

graph (a) of this section and other institutions eligible to acquire federal surplus real property, to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above-mentioned institutions, organizations and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions, organizations and agencies in every way possible in the consummation of acquisitions or transactions hereunder.

(f) The state agency for surplus property, in the administration of this act, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act, and make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for, property donable or donated to the state.

**History:** En. Sec. 2, Ch. 136, L. 1953;  
amd. Sec. 1, Ch. 166, L. 1957.

**Amendment**

The 1957 amendment completely revised this section. For section prior to amendment see parent volume.

**82-3103. Repealed.**

**Repeal**

This section (Sec. 3, Ch. 136, L. 1953), relating to cooperation with federal de-

partments and agencies, was repealed by Sec. 4, Ch. 166, Laws 1957, effective March 7, 1957.

**82-3105. Superintendent of public instruction—delegating powers and duties—bonding of employees of surplus property agency.** The state superintendent of public instruction may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this act.

The state superintendent of public instruction may in his discretion bond any person in the employ of the state agency for surplus property handling moneys, signing checks, or receiving or distributing property from the United States under authority of this act.

**History:** En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957.

**82-3106. Officers or employees authorized to secure transfer of surplus property.** Any provision of law to the contrary notwithstanding, the governing board, or in case there be none, the executive head, of any state department, instrumentality, or agency or of any city, county, school district or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property under this act through the state department of public instruction, donable property division under the provisions of section 203(j) of the Federal Property and Administrative



Services Act of 1949, as amended, and to obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation shall have been received by state department of public instruction, donable property division.

**History:** En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957.

**Repealing Clause**

Section 4 of Ch. 166, Laws 1957 read "Section 82-3103, Revised Codes of Montana, 1947, and all acts or parts of acts in conflict herewith are hereby repealed."

**Effective Date**

Section 5 of Ch. 166, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

## TITLE 83—STATE SOVEREIGNTY AND JURISDICTION

Chapter 5. Acceptance of amendments to enabling act, 83-503.

7. Tort actions against state, 83-701 to 83-707.

### CHAPTER 1—SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

#### 83-106. (23) Yellowstone National Park.

##### Compiler's Note

The case of Yellowstone Park Transp. Co. v. Gallatin County et al., 27 F 2d 410, cited in the annotation to this section, was reversed in 31 F 2d 644.

### CHAPTER 3—PERSONS COMPOSING THE PEOPLE OF THE STATE— RESIDENCE, RULES FOR DETERMINING

#### 83-303. (33) Residence, rules for determining.

##### Resident Freeholder

A freeholder becomes a resident under this section upon union of act and intent. If the intention to establish a permanent

residence be ascertained, the recency of the establishment is immaterial. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

### CHAPTER 5—ACCEPTANCE OF AMENDMENTS TO ENABLING ACT

Section 83-503. Acceptance of congressional amendment to sec. 12 of the enabling act.

**83-503. Acceptance of congressional amendment to sec. 12 of the enabling act.** The state of Montana hereby accepts the amendment to section twelve of the enabling act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States, February 26, 1957, (Public Law 6, 85th Congress), which amendment reads as follows:

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, that section 12 of the act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved February 22, 1889, is amended to read as follows: 'That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such States, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said States for public buildings at the capital of said States for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes.'

"Sec. 2. This act shall take effect as of February 22, 1889." Approved February 26, 1957.

**History:** En. Sec. 1, Ch. 209, L. 1957.

**Title of Act**

An act accepting the amendment enacted by Congress to section twelve of the enabling act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States, February 26, 1957; and providing for an effective date.

**Repealing Clause**

Section 2 of Ch. 209, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 209, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

## CHAPTER 7—TORT ACTIONS AGAINST STATE

- Section 83-701. Jurisdiction of district courts—limitation of liability of state to the extent of insurance coverage—no liability for punitive damages or interest—costs.
- 83-702. Practice and procedure.
- 83-703. Right of appeal—bond not to be required of state.
- 83-704. Attorney general—service of process upon—power to arbitrate, compromise and settle.
- 83-705. Judgment as obligation of state.
- 83-706. Effect of insurance—immunity of state for claims in excess of collectible insurance.
- 83-707. Act not to affect causes of action arising under workmen's compensation act.

**83-701. Jurisdiction of district courts—limitation of liability of state to the extent of insurance coverage—no liability for punitive damages or interest—costs.** The district courts of the state of Montana shall have exclusive jurisdiction to hear, determine, and render judgment to the extent of the insurance coverage carried by the state of Montana on any claim against the state of Montana for money only, accruing on or after the passage and approval of this act, on account of damage to or loss of property, or on account of personal injuries or death caused by the negligence or wrongful act or omission of any employee of the state of Montana, while acting within the scope of his office or employment, under circumstances where the state of Montana, if a private person, would be liable to the claimant for such damage, loss, injury or death, in accordance with the law of the state of Montana. The state of Montana shall be liable in respect of such claims to the said claimant in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to judgment, nor for punitive damages. Cost shall be allowed in all courts to the successful claimant, to the same extent if the state of Montana were a private litigant, except that such costs shall not include attorneys' fees.

**History:** En. Sec. 1, Ch. 254, L. 1959.

**Title of Act**

An act permitting actions on tort claims against the state of Montana to the extent of the insurance coverage carried by the state of Montana; describing the

practice and procedure therefor; providing that where insurance is applicable, settlement compromise or judgment shall be subject to such insuring provisions; containing a repealing clause and providing for an effective date.

**83-702. Practice and procedure.** In actions under the provisions of this act, the forms of process, writs, pleadings and motions, and the practice and procedure shall be the same as if the state of Montana were a



private person, and the same provisions for counterclaim and setoff, and for interest upon judgment shall be the same as if the state of Montana were a private person.

**History:** En. Sec. 2, Ch. 254, L. 1959.

**83-703. Right of appeal—bond not to be required of state.** The right of appeal from final judgment in the district court shall be governed by the same rules of practice and procedure that exist for private persons, except the state of Montana shall at no time be required to post a bond either on appeal or at any other time during the said litigation.

**History:** En. Sec. 3, Ch. 254, L. 1959.

**83-704. Attorney general—service of process upon—power to arbitrate, compromise and settle.** The attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served, and he shall have full charge of such litigation on behalf of the state of Montana, and by and with the consent of the board of examiners of the state of Montana, he is authorized to arbitrate, compromise or settle any claim cognizable under this act, after the institution of any suit thereon, and further, with the approval of the court in which said suit is pending.

**History:** En. Sec. 4, Ch. 254, L. 1959.

**83-705. Judgment as obligation of state.** A final judgment shall be the obligation of the state of Montana, and shall be paid in the same manner as other claims against the state.

**History:** En. Sec. 5, Ch. 254, L. 1959.

**83-706. Effect of insurance—immunity of state for claims in excess of collectible insurance.** Where collectible insurance coverage from any insurer is available to pay on behalf of, or to indemnify, the state of Montana, for any settlement, compromise or judgment under this act, any cause of action shall be subject to the terms and conditions of such policy or policies of insurance applicable; and in such event the state of Montana shall be immune under this act from any claim or demand, including judgments, in excess of such collectible insurance.

**History:** En. Sec. 6, Ch. 254, L. 1959.

**83-707. Act not to affect causes of action arising under workmen's compensation act.** Nothing herein contained shall be construed to affect any cause of action arising under the workmen's compensation act.

**History:** En. Sec. 7, Ch. 254, L. 1959.

#### **Effective Date**

#### **Repealing Clause**

Section 9 of Ch. 254, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Section 8 of Ch. 254, Laws 1959 provided the act should be in effect from and after the date of its passage and approval. Approved March 13, 1959.

## TITLE 84—TAXATION

- Chapter 3. Classification of property for taxation—basis for taxation, 84-301, 84-308.
4. Assessment of property—powers, duties and liability of county assessor, 84-429.7 to 84-429.13.
  6. Equalization of taxes by county boards of equalization, 84-602 to 84-604.
  7. Equalization of taxes and administration and supervision of all tax laws by state board of equalization, 84-708, 84-710.
  15. License taxes—corporation license tax, 84-1501 to 84-1503.
  16. License taxes—electrical energy producers, 84-1601.
  18. License taxes—gasoline dealers and distributors—special fuel tax, 84-1801.1, 84-1802.1, 84-1812, 84-1816, 84-1817, 84-1831, 84-1833, 84-1834, 84-1839.
  20. License taxes—metalliferous mines, 84-2004, 84-2006, 84-2007.
  21. License taxes—natural gas distributors, 84-2102.
  22. License taxes—oil producers, 84-2202.
  26. License taxes—telephone companies, 84-2601, 84-2602.
  33. Licenses—moving picture theaters, Repealed—Section 1, Chapter 33, Laws of 1957.
  38. Levy of taxes, 84-3804.
  41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands, 84-4132.1.
  47. Cities and towns—taxation and license, 84-4711.
  49. Income tax, 84-4901 to 84-4903.13, 84-4907.1, 84-4910, 84-4911, 84-4914, 84-4915, 84-4923.1, 84-4937, 84-4943, 84-4956, 84-4957.
  54. Mines taxation—general property and net proceeds tax, 84-5403, 84-5408, 84-5409.
  56. Cigarette tax—licenses—stamps, 84-5601, 84-5602, 84-5606 to 84-5609, 84-5621.

### CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION— BASIS FOR TAXATION

- Section 84-301. Classification of property for taxation.
- 84-308. Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.

**84-301. (1999) Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

**Class One.** The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

**Class Two.** All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used there-

with, automobiles, motor trucks and other power-driven cars, vehicles of all kinds, boats and all water craft, harness, saddlery and robes.

Class Three. Livestock, poultry and the unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith; and all office or hotel furniture and fixtures.

Class Four. All land, town and city lots, with improvements, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvents, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

Class Six. Property formerly included in this class is now classified by section 84-308 of the Revised Codes of Montana, 1947.

Class Seven. All property not included in the six preceding classes.

**History:** En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957.

#### **Amendment**

The 1957 amendment in Class Five, subd. (b) inserted the words "and co-operative rural telephone" and deleted a former subd. (d) which read "Industrial property included in Class Four, for a period of three years after such property is first assessed. Industrial property for the

purposes of this act shall not be construed to include agricultural or commercial property" and rewrote Class Six, see Class Six above.

#### **Repealing Clause**

Section 2 of Ch. 88, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 88, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 4, 1957.

### **DECISIONS UNDER FORMER LAW**

#### **1951 Amendment Unconstitutional**

Chapter 178 of Laws 1951 is an unconstitutional exercise of the legislative function to classify property for taxation. *Victor Chemical Works v. Silver Bow County*, 130 M 308, 301 P 2d 730, 737. (Concurring and dissenting opinion, 130 M 308, 301 P 2d 730, 737.)

Chapter 178 of Laws 1951, by permitting the reclassification of some industrial property into Class 5 while similar property is in Class 4 thwarts the mandate of sections 1 and 11 of Art. XII of the Constitution and is invalid. *Victor Chemical Works v. Silver Bow County*, 130 M 308, 301 P 2d 730. (Concurring and dissenting opinion, 130 M 308, 301 P 2d 730, 737.)



**84-308. (2000.6) Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.** As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state board of equalization shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes.

**History:** En. Sec. 6, Ch. 64, L. 1929; amd. Sec. 1, Ch. 172, L. 1957.

#### **Repealing Clause**

Section 2 of Ch. 172, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 172, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

#### **Amendment**

The 1957 amendment added all that portion of the third paragraph beginning with the words "on that portion of the true and full value and not represented by surplus \* \* \*" to end of section.

## **CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR**

- Section 84-429.7. Classification and appraisal—duties of county commissioners.  
 84-429.8. Classification and appraisal fund—tax levy for.  
 84-429.9. Assessments to be made on classification and appraisal.  
 84-429.10. Initiation and completion of classification and appraisal.  
 84-429.11. Notice of classification and appraisal to owners—appeals.  
 84-429.12. Classification and appraisal—general and uniform methods.  
 84-429.13. Work done under prior law.

**84-406. (2002) When assessment to be made—credits assessed, etc.**

#### **Individual Assessment**

Only individual assessment by individual ownership will satisfy this section. Vail v. Custer County, 132 M 205, 315 P 2d 993, 998.

Where irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under section 84-4151. Vail

v. Custer County, 132 M 205, 315 P 2d 993, 999.

#### **Limitation of Action**

Irrigation district's purported special assessments for 1921 through 1926 and the collection of water district charges due thereunder in 1949 was barred by the provisions of section 89-1804, subd. 5. Vail v. Custer County, 132 M 205, 315 P 2d 993, 1000.

**84-429. (2023) Land—how assessed.**

#### **References**

Cited in Flom v. Unknown Heirs of Conrad, 132 M 574, 319 P 2d 499, 503.

**84-429.1 to 84-429.6. Repealed.****Repeal**

These sections (Secs. 1 to 6, Ch. 198, L. 1955), relating to classification and appraisal of all taxable lands, were repealed

by Sec. 8, Ch. 191, Laws 1957, effective March 9, 1957. For almost identical provisions see 84-429.7 to 84-429.13.

**DECISIONS UNDER FORMER LAW****Unconstitutional**

This act purports to tax for a public purpose, one class of property only and entirely excludes and exempts all other classes of property. It exempts all personal property from taxation and is there-

fore violative of section 2 of article XII of the Montana Constitution. *Schladweiler v. State Board of Equalization*, 131 M 13, 306 P 2d 673, reaffirming *Stoner v. Timmons*, 59 M 158, 196 P 519.

**84-429.7. Classification and appraisal—duties of county commissioners.**

It is hereby made the duty of the board of county commissioners of the several counties of the state of Montana to accomplish, in such manner as the state board of equalization may direct, the following:

- a. The classification of all taxable lands.
- b. The appraisal of all taxable city and town lots.
- c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state board of equalization. Such maps, plats, forms and books of record shall be official records of the county. A certified copy of all such records as may be desired shall be furnished to the state board of equalization, and the state board of equalization shall provide for the payment to the several counties of the cost of preparing such copy of the records so provided for, as they may require.

After compliance with the other provisions of this act, it shall be the duty of the board of county commissioners to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

**History:** En. Sec. 1, Ch. 191, L. 1957.

**Title of Act**

An act providing for the classification of lands, and the appraisal of city and town lots and rural and urban improvements in the state of Montana for assessment and taxation purposes; defining the duties of the boards of county commis-

sioners, county assessors, and the state board of equalization in connection therewith, providing for a tax levy; providing for an effective date and repealing sections 84-430 to 84-437 inclusive, Revised Codes of Montana of 1947, chapter 198 of the Session Laws of 1955, and all acts and parts of acts in conflict herewith.

**84-429.8. Classification and appraisal fund—tax levy for.** The board of county commissioners shall create and establish a fund to be known as the "Classification and Appraisal Fund," and may levy annually a tax not to exceed two (2) mills upon all property in the county subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of such fund, and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by said board; and the board of county commissioners is hereby

authorized to declare an emergency and issue such warrants in the manner provided by section 16-1907 of the Revised Codes of Montana of 1947.

**History:** En. Sec. 2, Ch. 191, L. 1957.

**84-429.9. Assessments to be made on classification and appraisal.** The county assessor must base the assessments of all lands, city and town lots, and all improvements on the classification and appraisal as made by the board of county commissioners.

**History:** En. Sec. 3, Ch. 191, L. 1957.

**84-429.10. Initiation and completion of classification and appraisal.** It is the intent of this act that classification and appraisal be initiated expeditiously, but in no event later than July 1, 1957 and shall be completed not later than five (5) years from the effective date of this act.

**History:** En. Sec. 4, Ch. 191, L. 1957.

**84-429.11. Notice of classification and appraisal to owners—appeals.** It shall be the duty of the board of county commissioners to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any land and improvements be dissatisfied with the classification of his land or the appraisal of the improvements the board of county commissioners shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the board of county commissioners shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the board of county commissioners. If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the board of commissioners he shall have the right to appeal to the state board of equalization whose findings shall be final subject to the right of review in the proper court or courts.

**History:** En. Sec. 5, Ch. 191, L. 1957.

**84-429.12. Classification and appraisal—general and uniform methods.** It is hereby made the duty of the state board of equalization to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

2. For a general and uniform method of appraising city and town lots.



3. For a general and uniform method of appraising rural and urban improvements.

4. For a general and uniform method of appraising timber lands.

**History:** En. Sec. 6, Ch. 191, L. 1957.

**84-429.13. Work done under prior law.** Any and all work performed or caused to be performed by the boards of county commissioners of the various counties for the classification of lands and appraisal of city and town lots and rural and urban improvements, under the provisions of chapter 198, Laws of 1955, is hereby declared to be valid and of the same effect as if performed under the provisions of this act.

**History:** En. Sec. 7, Ch. 191, L. 1957.

and all acts and parts of acts in conflict herewith are hereby repealed."

#### **Repealing Clause**

Section 8 of Ch. 191, Laws 1957 read "Sections 84-430 to 84-437, inclusive, of the Revised Codes of Montana, 1947, and chapter 198 of the Session Laws of 1955,

#### **Effective Date**

Section 9 of Ch. 191, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

### **84-430 to 84-437. (2024 to 2031) Repealed.**

#### **Repeal**

These sections (Secs. 1 to 8, Ch. 239, L. 1921), relating to a uniform method of classification of property for tax purposes, were repealed by Sec. 8, Ch. 191, Laws 1957, effective March 9, 1957.

These sections had earlier been repealed by Sec. 7, Ch. 198, Laws 1955, effective March 4, 1955. See Repeal Note under these sections in the parent volume.

## **CHAPTER 5—ASSESSMENT BOOK—FORM—CONTENTS—DISPOSAL**

### **84-501. (2048) Property—how listed.**

#### **References**

Cited in *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 914.

## **CHAPTER 6—EQUALIZATION OF TAXES BY COUNTY BOARDS OF EQUALIZATION**

Section 84-602. Equalization of assessments.

84-603. Application for reduction in valuations.

84-604. Examination of applicant.

**84-602. (2114) Equalization of assessments.** The board has power after giving notice, in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment contained in the assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to the true value of such property in money, which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice, and immediately after reaching a decision, the board shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered or certified mail, addressed to the taxpayer at his last known

place of residence. The board also has power, in the event that any class of property is assessed as a class, at more or less than its actual value, by the county assessor and the valuation of such property within the county demands a general reclassification by raising or lowering all of the property in said class a certain percentage, the same may be done by the board of county commissioners.

**History:** Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; this section en. Sec. 2573, Rev. C. 1907; re-en. Sec. 2114, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1927; amd. Sec. 1, Ch. 187, L. 1933; amd. Sec. 1, Ch. 196, L. 1957.

#### Amendment

The 1957 amendment in the first sentence substituted the words "in writing, to the taxpayer, by registered or certified

mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment" for the words "in such matter as it may by rule prescribe, to increase or lower any assessment," inserted the words "which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice" and inserted the words "or certified" before the word "mail" near the end of sentence.

**84-603. (2115) Application for reduction in valuations.** No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board on or before the 1st day of August, a written application therefor, verified by his oath. Said application shall state the post office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The board of county commissioners shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section.

**History:** Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945;

amd. Sec. 2, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3674.

#### Amendment

The 1957 amendment inserted the words "state the post office address of the applicant" in the second sentence.

**84-604. (2116) Examination of applicant.** Before the board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry; except where the investigation is made by the county commissioners, as such board of equalization, and the change applies to all of a certain class of property in the county. The testimony of all witnesses upon such hearing must be reduced to writing and preserved, and transcribed if taken in shorthand or stenotype. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter.

**History:** Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C.

1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187, L. 1933; amd. Sec. 3, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3675.

**Amendment**

The 1957 amendment substituted "any application" for "the application" and "each person" for "such person" in the first sentence; inserted the words "as provided in the preceding section" and the words "as such board of equalization" in the second sentence and added the third sentence.

**Repealing Clause**

Section 4 of Ch. 196, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 5 of Ch. 196, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

**84-605. (2116.1) Change of valuation of class of property, etc.****Intervention of Court**

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. State ex rel. Reid v. District Court, — M —, 328 P 2d 634, 635.

**Writ of Prohibition**

Action of district court in issuing writ of prohibition against state board of equalization was premature where it prohibited the board from proceeding further under this section and prevented the board from discharging its constitutional duties. State ex rel. Reid v. District Court, — M —, 328 P 2d 634, 635.

## CHAPTER 7—EQUALIZATION OF TAXES AND ADMINISTRATION AND SUPERVISION OF ALL TAX LAWS BY STATE BOARD OF EQUALIZATION

Section 84-708. Powers and duties.

84-710. Notice of intention to change assessment.

**84-701. (2122.1) State board of equalization—appointment of members, etc.****References**

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

**84-706. (2122.6) Office, furnishings and supplies.****References**

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 397 (dissenting opinion).

**84-708. (2122.8) Powers and duties.** It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

(1) to (17). \* \* \* [Subdivisions (1) to (17), same as parent volume.]

(18) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the board, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

**History:** En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957.

**Amendment**

The 1957 amendment in subd. 18 added



the words "and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures" and deleted a former subd. (19) which read "(19) To exercise and perform such further powers and duties as are or may be granted to or imposed upon the board by law."

#### Repealing Clause

Section 2 of Ch. 137, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 137, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

#### Intervention of Court

Court may not intervene where action of the board is not arbitrary, fraudulent

or contrary to law. State ex rel. Reid v. District Court, — M —, 328 P 2d 634, 635.

#### Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. State ex rel. Reid v. District Court, — M —, 328 P 2d 634, 635.

#### Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. State ex rel. Reid v. District Court, — M —, 328 P 2d 634, 635.

#### References

Cited in Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

**84-710. (2122.10) Notice of intention to change assessment.** When the state board of equalization shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state board) said board shall, before making any change in such assessment, fix a time and place for a hearing thereon, and give to such taxpayer written notice of such hearing by certified letter deposited in the post office postpaid, and directed to said taxpayer at his last known place of residence, at least ten (10) days before the day fixed for such hearing. Such notice shall state the purpose of such hearing and the time and place when the same will be held.

When the state board of equalization shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than one county the board shall fix the time and place of hearing so as to accommodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard.

**History:** En. Sec. 10, Ch. 3, L. 1923; amd. Sec. 1, Ch. 89, L. 1959.

#### Amendment

The 1959 amendment, in the first paragraph, substituted "certified letter" for "registered letter."

#### Repealing Clause

Section 2 of Ch. 89, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### References

Cited in State ex rel. Reid v. District Court, — M —, 328 P 2d 634, 635.

## CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

Section 84-1501. Corporation license tax—organizations exempt therefrom.

84-1501.1. Definitions.

84-1501.2. Election by small business corporation.

84-1502. Deductions allowed in computing income.

84-1503. Segregation of income within and without state.

**84-1501. (2296) Corporation license tax—organizations exempt therefrom.** The term corporation includes associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be five per centum (5%) of all net income for the taxable period, provided however, that as to all taxable periods ending on or after December 31, 1960, whether on a calendar or fiscal year basis, the percentage of net income to be paid under this act shall be four and one half per centum (4½%). Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than ten dollars (\$10).

There shall not be taxed under this title any income received by any—

First. Labor, agricultural or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

Fourth. Domestic building and loan associations or cooperative bank without capital stock, organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Labor, agricultural or horticultural cooperatives organized and operated on a cooperative basis; (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 6 per centum per annum, whichever is greater on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done with the United States, state of Montana or its political subdivisions shall be exempt under this act. Any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis.

Twelfth. Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;



Thirteenth. In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function.

**History:** En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959.

#### Amendments

The 1957 amendment substituted "five (5) per centum" for "three (3) per centum" both times it appears in the first paragraph and raised the minimum tax from \$5 to \$10.

The 1959 amendment, in the first paragraph, substituted the phrase "such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth" each time it appears for the phrases "five (5) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations whose net income is taxable under this title" and "five (5) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including the interest on bonds, notes or

other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock, or from net earnings of resident corporations, joint stock companies or associations whose net income is taxable under this title." The amendment also added what is now the second paragraph with the exception of the last sentence in that paragraph.

#### Separability Clause

Section 2 of Ch. 264, Laws 1959 read "If any portion, section, subsection, paragraph, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the remainder of the act."

#### Repealing Clauses

Section 3 of Ch. 232, Laws 1957 and Sec. 4 of Ch. 264, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 2 of Ch. 232, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

Section 3 of Ch. 264, Laws 1959 read "This act shall be effective as to all taxable periods ending on or after December 31, 1958, whether on the calendar or fiscal year basis."

**84-1501.1. Definitions.** (a) Small business corporation. For purposes of this act, the term "small business corporation" means a corporation doing business in Montana, and which does not—

- (1) have more than ten (10) shareholders;
  - (2) have as a shareholder a person (other than an estate) who is not an individual;
  - (3) have a nonresident alien as a shareholder; and
  - (4) have more than one class of stock.
- (b) Electing small business corporation. For purposes of this act, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under this act, in effect for such taxable year.

**History:** En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959.

#### Compiler's Note

A preliminary clause of this act read as follows: "Chapter 15 of Title 84 of the Revised Codes of Montana, 1947, is amended by addition of a new section en-

titled, 'Election of Certain Small Business Corporations as to Taxable Status' and numbered 84-1501.1, as follows:" Then sections 1 and 2 were set out in the chapter. Section 1 was entitled "Definitions" while section 2 was entitled "Election by Small Business Corporation."

**Title of Act**

An act relating to the taxation of small business corporations and providing the definition of a small business corporation; and providing for election to be treated as a small business corporation; and provid-

ing for the taxation of corporate earnings through personal income tax of the stockholders; and providing for the retention of the minimum corporation license tax; and repealing all acts and parts of acts in conflict herewith.

**84-1501.2. Election by small business corporation.** (a) Eligibility. Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation—

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day,  
consent to such election.

(b) Effect. If a small business corporation makes an election under subsection (a), then—

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

(c) Where and how made.

(1) In general. An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the state board of equalization shall prescribe by regulations.

(2) Taxable years beginning before date of enactment. An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1958, and on or before the date of the enactment of this subchapter, and ends after such date at any time—

(A) within the 90-day period beginning on the day after the date of the enactment of this subchapter, or

(B) if its taxable year ends within such 90-day period, before the close of such taxable year.

An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in this act) on each day after the date of the enactment of this subchapter and before the day of such election.

(d) Years for which effective. An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e).

(e) Termination.

(1) New shareholders. An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) on the day on which the election is made, if such election is made after such first day,

becomes a shareholder in such corporation and does not consent to such election within such time as the state board of equalization shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(2) Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A) for the taxable year in which made, if made before the close of the first month of such taxable year.

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the state board of equalization shall prescribe by regulations.

(3) Ceases to be small business corporation. An election under subsection (a) made by a small business corporation shall terminate if at any time—

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day,

the corporation ceases to be a small business corporation (as defined in this act). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsec-



tion (a) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the state board of equalization consents to such election.

(g) This election shall not be effective unless the corporate net income or loss of such electing corporation shall have been included in the stockholders' adjusted gross income as such is defined in section 84-4905 Revised Codes of Montana, 1947, as amended.

(h) Every electing corporation shall be required to pay the minimum fee of ten dollars (\$10.00) required by section 1501 [84-1501].

**History:** Sec. 2, Ch. 122, L. 1959.

**Repealing Clause**

**Compiler's Note**

The bracketed reference to 84-1501 was added by the compiler.

Section 3 of Ch. 122, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**84-1502. (2297) Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the state board of equalization; provided, however, for the purpose of determining depletion, depreciation and obsolescence, in all cases not expressly provided for in this act, the provisions of the most recent act of Congress of the United States, commonly known as the federal income tax act, and the rules, regulations and decisions thereunder, insofar as the same are applicable and pertinent and not repugnant to or inconsistent with the express provisions of this act, shall be the rule of decision by the state board of equalization.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

5. Taxes paid within the year except not to include the following:

(a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income of profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

6. In the case of insurance companies, in addition to the above, the net addition required by law to be made within the year to reserve funds, and paid within the year on policy and annuity contracts.

**History:** En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959.

#### **Amendment**

The 1959 amendment in subd. 1 substituted "or incurred during the taxable year" for "within the year"; inserted the words "subject to the limitation herein-after contained"; added the last sentence to that subdivision and substituted present subd. 5 for the prior one, for text of which see parent volume.

#### **Separability Clause**

Section 2 of Ch. 263, Laws 1959 read "If any portion, section, subsection, paragraph, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the remainder of the act."

#### **Repealing Clause**

Section 3 of Ch. 263, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 263, Laws 1959 read "The provisions of this act shall apply to all taxable years ending after June 30, 1959."

**84-1503. (2297.1) Segregation of income within and without state.** If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state board of equalization, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state board of equalization shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The board shall publish not less than once a year, all rules and regulations pertaining to this section. All decisions by the board under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer cannot

change from one method of accounting to another method of accounting without first obtaining permission from the board.

**History:** En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957.

**Amendment**

The 1957 amendment added the proviso clause to the first sentence and added the second, third and fourth sentences.

**Repealing Clause**

Section 2 of Ch. 219, Laws 1957 repealed all acts or parts of acts in conflict therewith.

CHAPTER 16—LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

Section 84-1601. Electrical energy producers' license tax.

**84-1601. (2343.1) Electrical energy producers' license tax.** That in addition to the license tax now provided by law, each and every individual, firm, partnership, common law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of August, 1957, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and one-quarter per cent ( $1\frac{1}{4}\%$ ) of such gross amount as shown on such statement in the manner and within the time hereinafter provided.

**History:** En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957.

**Amendment**

The 1957 amendment substituted "August, 1957" for "April 1934" and raised the license tax from 1% to  $1\frac{1}{4}\%$ .

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

Section 84-1801.1. Gasoline license tax—amount—evaporation and other loss.

84-1802.1. Payment or credit of gasoline tax in event of change in rate of said tax.

84-1812. Distribution of proceeds of tax—funds.

84-1816. Use of state highway fund on federal highway system.

84-1817. Distribution of state highway construction funds.

84-1831. Definitions.

84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.

84-1834. Special fuel dealers' and special fuel users' records.

84-1839. Violations and penalties.

**84-1801.1. Gasoline license tax—amount—evaporation and other loss.** Beginning January 16, 1958, every dealer (as defined in section 84-1801 of the Revised Codes of Montana, 1947, and acts amendatory) shall, when engaged in the business of producing, refining, manufacturing or compounding gasoline for sale or use, or importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or use; pay to the state board of equalization, a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal



to six cents (6¢) for each gallon of gasoline (as defined in section 84-1801, subsections 1(a), 1(b) and subsection 8 of the Revised Codes of Montana, 1947 and acts amendatory) refined, manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold to other persons. In making the computation of license tax due and in making payment thereof, two per cent (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

**History:** En. Sec. 1, Ch. 230, L. 1957.

#### **Title of Act**

An act relating to a license tax for gasoline dealers; providing that such license tax shall be seven cents on each gallon of gasoline sold or distributed; providing for a deduction from such tax for evaporation; providing for an effective date for such tax; repealing the license tax provided in section 10 of chapter 39, Laws of Montana, 1945, as amended; and providing an effective date of this act; and repealing all acts and parts of acts in conflict herewith.

#### **Repealing Clauses**

Section 2 of Ch. 230, Laws 1957 read "The license tax of seven cents (7¢) a gallon of gasoline on dealers or distributors, provided for in section 10 of chapter 39, Laws of Montana, 1945, as amended, shall be repealed from and after January 15, 1958."

Section 3 of Ch. 230, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 230, Laws 1957 provided the act should be in effect from and after January 15, 1958.

#### **Interim Gasoline Tax**

Section 84-1801.1 becomes effective from and after January 15, 1958. Until such date the gasoline tax is that established by section 10 of chapter 39, Laws 1945; amended by Sec. 1, Ch. 167, Laws 1949; amended by Sec. 1, Ch. 255, Laws 1955;

amended by Sec. 1, Ch. 229, Laws 1957. Such acts are repealed by section 2 of Ch. 230, Laws 1957 from and after January 15, 1958. Chapter 229 of Laws 1957 reads as follows:

"An act to amend section 10, chapter 39, of the Laws of the Twenty-ninth Legislative Assembly of the state of Montana, 1945, as amended by chapter 255 of the Laws of the Thirty-fourth Legislative Assembly of the state of Montana, 1955, relating to the license tax paid by gasoline dealers to the state board of equalization and fixing the amount thereof; providing for an effective date; and repealing all acts and parts of acts in conflict herewith.

"Section 1. That section 10 of chapter 39, of the Laws of the Twenty-ninth Legislative Assembly of the state of Montana, 1945, as amended by chapter 255 of the Laws of the Thirty-fourth Legislative Assembly of the state of Montana, 1955, be, and the same is hereby amended to read as follows:

"Section 10. For the purpose of providing funds for the payment of the interest upon the maturing principal of the state highway treasury anticipation debentures herein provided for, every dealer as referred to and defined in the gasoline license tax laws of the state of Montana now in effect, until the principal and interest of all debentures issued under the authority of this act shall have been paid, shall pay to the state board of equalization for deposit in the state treasury, a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal to seven cents (7¢)

for each gallon of gasoline (as defined in section 84-1801, subsections 1 (a), 1 (b) and subsection 8 (2381.11), Revised Codes of Montana, 1947, (and acts amendatory), for the period commencing March 31, 1957 and ending January 15, 1958, refined, manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold

to other persons. In making the computation of license tax due and in making payments thereof, two per cent (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

"Section 2. All acts or parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect from and after March 31, 1957, to and through January 15, 1958."

**84-1802.1. Payment or credit of gasoline tax in event of change in rate of said tax.** In the event of an increase in the rate of tax imposed by the state of Montana upon gasoline, each dealer shall pay over to the board of equalization, in the manner herein provided, such additional amount of tax upon all gasoline in storage or in transit on the date of such increase in the rate of tax upon gasoline. In the event of a decrease in the rate of tax imposed upon gasoline, each dealer who shall have previously paid the greater tax shall be entitled to a credit or setoff for the amount of such differential in the rate of tax on gasoline in storage or in transit on the date of such decrease in the rate of tax. Said payment of tax or credit and setoff of tax shall be transmitted to the board of equalization within forty-five (45) days of such increase or decrease in the rate of tax upon gasoline, and shall be accompanied by an affidavit of said dealer containing a true and correct inventory of gasoline in storage or in transit on the date of increase or decrease in the rate of tax imposed on gasoline, except that a credit or setoff of tax shall be allowed in the manner provided herein on gasoline in storage or in transit on January 16, 1958, if the same be filed with the board of equalization within forty-five (45) days from and after the effective date of this act. The state board of equalization shall have the power to audit the records necessary to determine the validity of any claim.

**History:** En. 84-1802.1 by Sec. 1, Ch. 175, L. 1959.

#### **Title of Act**

An act to amend Chapter 18, Title 84 of the Revised Codes of Montana, 1947, by adding thereto a new section to be numbered 84-1802.1, and providing for the payment or the credit and setoff of the tax upon gasoline in storage on the date

of increase or decrease in the rate of tax imposed on gasoline, providing that power to determine the validity of such claims shall rest in the state board of equalization; and containing a repealing clause.

#### **Repealing Clause**

Section 2 of Ch. 175, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**84-1812. (2381.22) Distribution of proceeds of tax—funds.** All money received by the state treasurer in payment of license taxes under the provisions of this act shall be deposited and credited (a) seventy-five per cen-

tum (75%) to the state highway fund, and (b) twenty-five per centum (25%) to a special fund designated as "gasoline license drawback fund."

All money so collected and deposited in the gasoline license tax drawback fund shall be used for the purpose of making such refunds and paying such drawbacks as are authorized by law to be made or paid to purchasers of gasoline used in this state for other purposes than the propulsion of motor vehicles over the public highways and streets of this state, provided, however, that at the close of each fiscal year, the state treasurer shall transfer all money remaining unexpended in said gasoline license tax drawback fund to the state highway fund; provided, further, that if at any time the money in said gasoline license tax drawback fund is insufficient in amount to pay duly authorized and approved refunds or drawbacks, the state treasurer shall transfer from the state highway fund a sum or sums sufficient in amount to meet and pay all such outstanding authorized and duly approved refunds or drawbacks.

All money so collected and deposited or transferred to said state highway fund shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act, approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information hereby determined to be a proper administrative expense and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering of such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act; provided, that the total cost to the state of administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per centum (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission, and said eight per centum (8%) shall be known as the administrative fund. Provided further that the expenditure for dissemination of public information shall not exceed an annual expenditure of eighty-five thousand dollars (\$85,000.00).

**History:** En. Sec. 13, Ch. 19, L. 1927; amd. Sec. 1, Ch. 178, L. 1929; amd. Sec. 1, Ch. 231, L. 1953; amd. Sec. 1, Ch. 206, L. 1957.

#### **Amendment**

The 1957 amendment substituted the last sentence of this section for one which formerly read "Provided further that the

expenditure for dissemination of public information shall not exceed three and one-half per cent (3½%) not to exceed an annual expenditure of sixty-five thousand dollars (\$65,000.00) of the above mentioned administrative fund; provided, however, that said expenditures for the dissemination of public information shall terminate June 30, 1955."



**84-1816. (2396.2) Use of state highway fund on federal highway system.** All moneys of the state highway fund, including moneys arising from the license tax upon dealers in gasoline and motor fuels, but excluding moneys being held in such fund for refund or drawback purposes and expense of collection and enforcement, shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering on the federal highway system of highways in this state selected and designated under the provision of the federal aid act, approved July 11, 1916, and the federal highway act approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering of such other roads as have been or may be authorized by the laws of Montana. Provided, that the total net costs to the state for administration on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per cent (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission, and said eight per cent (8%) shall be known as the administrative fund. Provided further that the expenditure for dissemination of public information shall not exceed an annual expenditure of eighty-five thousand dollars (\$85,000.00). It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 84-1817; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

**History:** En. Sec. 2, Ch. 18, L. 1927; amd. Sec. 1, Ch. 74, L. 1945; amd. Sec. 1, Ch. 264, L. 1947; amd. Sec. 1, Ch. 212, L. 1953; amd. Sec. 1, Ch. 241, L. 1953; amd. Sec. 1, Ch. 88, L. 1955; amd. Sec. 2, Ch. 206, L. 1957.

**Amendment**

The 1957 amendment increased the annual expenditure for dissemination of public information from \$65,000 to \$85,000.

**Repealing Clause**

Section 3 of Ch. 206, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**84-1817. (2396.3) Distribution of state highway construction funds.** (1) Allotment of state construction funds for federal aid highway systems. At the start of the fiscal year beginning July 1, 1957, and at the beginning of each fiscal year thereafter, the state highway commission

shall allot available state construction moneys to the federal aid interstate highway system, the federal aid primary highway system, the federal aid secondary highway system and the federal aid urban highway system in proportion to the amounts necessary to match the respective amounts of federal aid available for expenditure on these systems at the beginning of each fiscal year.

(2) Apportionment of state construction moneys to the federal aid primary highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, the state highway commission shall compute from its records the percentage of incompleting mileage of the federal aid primary highway system within each of said districts which each district respectively bears to the total incompleting mileage of said federal aid primary highway system within this state at that time, and the actual respective percentages of incompleting mileage in each district as so computed and determined at the beginning of each fiscal year shall be used in apportioning construction moneys for that year to each of the said financial districts from the state highway fund as defined and provided by section 84-1816. As a basis for the determination of the amount of incompleting mileage of said federal aid primary highway system in this state for each fiscal year, the state highway commission shall adopt as the criterion the current definition, as prescribed by the bureau of public roads, for a fully and adequately completed federal highway in this state. This criterion shall be considered as a one hundred per cent (100%) completed federal highway; and federal highway mileage which is only partially completed under the application of this criterion, shall be considered as only partially completed on a percentage basis, this to be determined from the relative estimated percentage costs of construction already performed and of additional construction which must be performed to bring said mileage up to the standard of said criterion.

(3) Apportionment of state construction moneys to the federal aid secondary highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid secondary highway system shall be apportioned to each of the financial districts as defined in section 84-1815 on a percentage basis as determined in the following manner: One-fourth ( $\frac{1}{4}$ ) in the ratio of land area in each financial district to the total land area in the state; one-fourth ( $\frac{1}{4}$ ) in the ratio of the rural population in each financial district to the total rural population in the state; and one-fourth ( $\frac{1}{4}$ ) in the ratio of the rural road mileage in each financial district to the total rural road mileage in the state; one-fourth ( $\frac{1}{4}$ ) in the ratio of value of rural lands in each financial district to the total value of rural land in the state. Said moneys to be further apportioned to the counties within each financial district in the same ratio of land area, rural population and rural road mileage; and value of rural lands, provided, that to the extent necessary to permit orderly programming and construction of projects, expenditures of construction money in any county may exceed the amount apportioned to that county with the provision that such excess expenditure shall not exceed three (3) times the amount of the last annual

apportionment to that county and that any excess expenditures shall be deducted from future apportionments to that county.

For the purposes of this section, rural population is defined as total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the federal census. Decennial census figures for population shall be adjusted during the interim between censuses in accordance with the percentage of change occurring in annual motor vehicle registration figures for each county.

For the purposes of this section, rural road mileage is defined as all road mileage outside incorporated cities, exclusive of road mileage on the federal aid rural primary highway system. Rural road mileage figures reported by the road inventory of the state highway commission shall be used in determining rural road mileage as defined in this section.

For the purposes of this section, the value of rural lands, shall include the value of state owned lands from which the state derives grazing, timber and agricultural income.

The basis for the value of rural lands shall be computed from the figures in the latest biennial report of the Montana state board of equalization. The basis for the value of state owned lands shall be computed from the latest figures on the total grazing, timber and agricultural lands in each county, submitted by the commissioner of state lands and investments in his latest biennial report. The average value of privately owned lands shall be the average value of the state owned lands, if the actual values are not available.

(4) Apportionment of state construction moneys to the federal aid urban highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid urban highway system shall be apportioned to the cities in the state over five thousand (5,000) population in the ratio of urban population in each city to the total urban population in the state for all cities over five thousand (5,000) population.

For the purpose of this section, urban population is defined as population within the incorporated limits of cities over five thousand (5,000) population and also the population within unincorporated urban fringe areas as delineated and reported in the federal census.

To the extent necessary to permit orderly programming and construction of projects, expenditures of construction money in any urban city may exceed the amount apportioned to that city with the provision that such excess expenditure shall be deducted from future apportionments to that city.

(5) Apportionment of state construction moneys to the federal aid interstate highway system. At the start of the fiscal year beginning July 1, 1957, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid interstate highway system shall be apportioned to each of the financial districts, as defined in section 84-1815, Revised Codes of Montana, 1947, in proportion to the estimated cost of constructing or reconstructing the system in each district as compared with the total estimated cost of constructing or reconstructing the



entire system within the state. The cost estimates to be used for apportioning said state construction funds shall be those costs developed by the state highway commission in accordance with the provisions of subsection (d) of section 108 of title I of the federal aid highway act of 1956.

(6) The state highway commission may vary the expenditures made in any financial district under the provisions of this act to the extent of fifteen per cent (15%) above the amount of money allocated to such district in any year for the federal aid primary highway system or the federal aid secondary highway system, and to the extent of one hundred per cent (100%) above the amount of money allocated to such district in any year for the federal aid interstate highway system, provided that the allocation of construction money to such district for the next succeeding fiscal year shall be decreased by an amount equal to such increased expenditures.

**History:** En. Sec. 3, Ch. 18, L. 1927; amd. Sec. 1, Ch. 102, L. 1937; amd. Sec. 1, Ch. 213, L. 1939; amd. Sec. 1, Ch. 175, L. 1943; amd. Sec. 1, Ch. 87, L. 1945; amd. Sec. 1, Ch. 240, L. 1953; amd. Sec. 1, Ch. 113, L. 1957; amd. Sec. 1, Ch. 133, L. 1959.

#### Amendments

The 1957 amendment in subd. (1) substituted "July 1, 1957" for "July 1, 1953," inserted the words "the federal aid interstate highway system" and substituted the words "available for expenditure on these systems at the beginning of each fiscal year" for the words "apportioned to these systems" which appeared at the end of said subd. (1); added a new subd. (5); renumbered former subd. (5) as subd. (6) and in subd. 6 inserted the words "for the

federal aid primary highway system or the federal aid secondary highway system, and to the extent of one hundred per cent (100%) above the amount of money allocated to such district in any year for the federal aid interstate highway system."

The 1959 amendment added the fourth and fifth paragraphs to subd. (3) and in the third paragraph of subd. (4) deleted the words "expenditures of construction of projects" which appeared after the word "projects."

#### Repealing Clauses

Section 2 of Ch. 113, Laws 1957 and Sec. 2 of Ch. 133, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### 84-1818. (2396.4) Refund of gasoline license tax—procedure.

#### Gasoline Lost—Refund

Since there has been no amendment to this law expressing disapproval of an earlier supreme court decision that gasoline lost or destroyed should be included in the provision for a refund of the tax paid, the legislature in effect approved the interpretation. *State v. State Board of Equalization*, 133 M 393, 324 P 2d 1057, 1061.

Where gasoline was lost during a flood which tipped over storage tank, the pur-

chaser was entitled to a refund of the tax paid. *State v. State Board of Equalization*, 133 M 393, 324 P 2d 1057, 1061.

Where it has been decided that a claimant is entitled to a refund but the claim is such that it cannot be regularly itemized on prescribed forms, the board cannot set up the failure to comply with technical regulations as a reason for denying the claim. *State v. State Board of Equalization*, 133 M 393, 324 P 2d 1057, 1061.

**84-1831. Definitions.** As used in this act, the following definitions shall apply:

(a). \* \* \* [Same as parent volume.]

(b). \* \* \* [Same as parent volume.]

(c) As used in this act, "public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds

of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain.

(d) to (i). \* \* \* [Subdivisions (d) to (i), same as parent volume.]

**History:** En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959.

**Amendment**

The 1959 amendment substituted present subd. (c) for one that read: "‘Highway’ means every way or place generally

open to the use of the public for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair or reconstruction."

**84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.** (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncancelled fuel dealers' license issued to him by the board.

Every special fuel user shall obtain from the board, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any member of the state board of equalization or any authorized employee of said board, or any other law enforcement officer.

(b) to (g). \* \* \* [Subdivisions (b) to (g), same as parent volume.]

(h) Revocation, suspension, cancellation and surrender of license and permit: The board may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the board shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the board may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the board of any such license or permit, the holder thereof shall immediately surrender the same to the board for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the board for cancellation.

The board shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i). \* \* \* [Same as parent volume.]

(j) Additional bond or deposit: The board may require a special fuel dealer or special fuel user to give a new or additional surety bond

or to deposit additional securities of the character specified in section 2 (i) [84-1831 (i)], if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the board, said board forthwith shall cancel his license.

**History:** En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957.

#### Amendment

The 1957 amendment in subd. (a) deleted a former second sentence which read "Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this state, it shall be unlawful for any person to consume special fuel for the propulsion of a motor vehicle upon the highways of this state unless such person is the holder of an uncanceled fuel user's license issued to him by the board" and substituted the present second paragraph for one which read "Every special fuel user shall obtain prior to the use of special fuel for the propulsion of a motor vehicle or vehicles, in this state, a special fuel vehicle permit for such vehicle or vehicles operated by him upon the highways as herein defined"; in subd. (h) in-

serted in the caption to said subdivision the word "suspension" and deleted the reference to "bond"; in the first sentence substituted the word "any" for "a" and in the second sentence substituted the words "of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them," for the words "to show cause within thirty (30) days of the date of the notice why the license or permit" and added the second paragraph; in subd. (j) substituted the word "its" for "his" appearing before the word "opinion" and changed spelling of the word "therefor" to "therefore."

**84-1834. Special fuel dealers' and special fuel users' records.** (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the board may require, and shall produce them for the inspection of the board at any time during the business hours of the day.

(b) Retention of records: Said records, receipts, invoices and other pertinent papers shall be required to be kept for a period of at least five (5) years from the date on which the return to which they relate was required to have been made.

**History:** En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957.

#### Amendment

The 1957 amendment inserted the words "and inspection of" to the heading of subd. (a) and substituted the words "and shall produce them for the inspection of

the board at any time during the business hours of the day" for a former last sentence of subd. (a) which read "The records, receipts, invoices and other pertinent papers shall be available at all times during the business hours of the day, to the board" and in subd. (b) substituted the word "on" for the word "of."

**84-1839. Violations and penalties.** (a) Penalties and remedies: Any person violating any provision of this act is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than two thousand dollars (\$2,000.00) or by



imprisonment for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

(b) Penalties are cumulative: The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this act.

**History:** En. Sec. 10, Ch. 162, L. 1955; amd. Sec. 3, Ch. 216, L. 1957.

(c) to (b), and in subd. (a) substituted the word "act" for the word "section."

#### Amendment

The 1957 amendment deleted former subd. (a) for text of which see parent volume, relettered former (b) to (a) and

#### Repealing Clause

Section 4 of Ch. 216, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 20—LICENSE TAXES—METALLIFEROUS MINES

Section 84-2004. Amount of tax.

84-2006. Computation and notice of tax.

84-2007. Delinquent taxes—penalty.

**84-2004. (2344.4) Amount of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, shall be one dollar, together with an additional sum or amount computed on the gross value of product which may have been derived by [such person from] such business, work or operation within this state during the calendar year immediately preceding, at the following rates one-half of one per cent ( $\frac{1}{2}$  of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars (\$100,000) and does not exceed two hundred and fifty thousand dollars (\$250,000); three-fourths of one per cent ( $\frac{3}{4}$  of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars (\$250,000) and does not exceed four hundred thousand dollars (\$400,000); one per cent (1%) of the amount by which the gross value of product exceeds four hundred thousand dollars (\$400,000) and does not exceed five hundred thousand dollars (\$500,000) and one and one-fourth per cent ( $1\frac{1}{4}$ %) of the amount by which the gross value of product exceeds five hundred thousand dollars (\$500,000).

**History:** En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959.

amounts from \$100,000 to \$250,000; from  $\frac{1}{2}$  of 1% to  $\frac{3}{4}$  of 1% on amounts from \$250,000 to \$400,000, and from  $\frac{3}{4}$  of 1% to 1% on amounts from \$400,000 to \$500,000.

#### Compiler's Note

The bracketed words "such person from" were inserted by the compiler. The words were in the section prior to the 1959 amendment, but were omitted from the 1959 act, apparently through a typographical error. Hence they were inserted in brackets by the compiler.

#### Amendments

The 1957 amendment increased the per cent of tax of the amount by which the gross value of product exceeds \$500,000.00 from 1% to  $1\frac{1}{4}$ %.

The 1959 amendment increased the rate of tax from  $\frac{1}{4}$  of 1% to  $\frac{1}{2}$  of 1% on

#### Repealing Clauses

Section 2 of Ch. 220, Laws 1957 and Sec. 2 of Ch. 176, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 3 of Ch. 220, Laws 1957 provided the act should be in effect from and after July 1, 1957.

Section 3 of Ch. 176, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

**84-2006. (2344.6) Computation and notice of tax.** The state board of equalization shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said board shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p. m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

**History:** En. Sec. 6, Initiative No. 28, 1925; amd. Sec. 1, Ch. 165, L. 1959.

**Amendment**

The 1959 amendment advanced the due date set forth in the second sentence from November 30 to June 30.

**84-2007. (2344.7) Delinquent taxes — penalty.** All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock p. m., on the thirtieth day of June following the date when the same are assessed and certified to the state treasurer, and as the same become delinquent a penalty of ten per centum shall be added thereto, and the whole amount of said license tax, with penalty added, shall bear interest at the rate of twelve per centum per annum from the date of becoming delinquent until paid.

**History:** En. Sec. 7, Initiative No. 28, 1925; amd. Sec. 2, Ch. 165, L. 1959.

**Repealing Clause**

Section 3 of Ch. 165, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment advanced the due date from November 30 to June 30.

CHAPTER 21—LICENSE TAXES—NATURAL GAS DISTRIBUTORS

Section 84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.

**84-2102. (2408.2) Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.** Every person engaged in or carrying on the business of distributing to consumers within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within the state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state for the purpose of use outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state must, for the year beginning July 1, 1957, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to one-half ( $\frac{1}{2}$ ) of one (1) cent for each one thousand (1000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipe line to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale, and that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths ( $\frac{4}{10}$ ) pounds per square inch, and at a temperature of sixty (60) degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to consumers.

**History:** En. Sec. 2, Ch. 180, L. 1933; amd. Sec. 1, Ch. 52, Ex. L. 1933; amd. Sec. 1, Ch. 205, L. 1957.

**Amendment**

The 1957 amendment substituted the word "consumers" for the words "the



public" each time it appears in this section and also substituted "beginning July 1, 1957" for the year "1934" and "one-half ( $\frac{1}{2}$ )" for "three-eighths ( $\frac{3}{8}$ )."

#### Repealing Clause

Section 2 of Ch. 205, Laws 1957 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 22—LICENSE TAXES—OIL PRODUCERS

Section 84-2202. Oil producers' license tax—amount—exceptions.

#### 84-2202. (2398) Oil producers' license tax — amount — exceptions.

Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) two per cent of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) two and one-half per cent of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

**History:** En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959.

#### Amendments

The 1957 amendment substituted "beginning July 1, 1957" for the year "1923"; substituted a semicolon, the words "computed at the following rates:" and a new subd. (a) reading, "(a) two per cent of an amount determined by multiplying the number of producing wells of such person on each lease or unit by the total gross value of the first four hundred fifty (450) barrels of petroleum and other mineral or crude oil produced from such lease or unit in each calendar quarter" for the words "in an amount equal to two per centum of the total gross value of all petroleum and other mineral or crude oil produced by such person within this state during such year"; and created a new subd. (b), inserting at the beginning thereof the words "two and one-half per cent of the total gross value of all such

production of such person in excess of the first four hundred fifty (450) barrels per calendar quarter from each lease or unit."

The 1959 amendment substituted present subd. (a) and the portion of present subd. (b) preceding the first semicolon therein, respectively, for the subd. (a) inserted by the 1957 amendment and for the words inserted by the 1957 amendment at the beginning of subd. (b).

#### Repealing Clauses

Section 2 of Ch. 21, Laws 1957 and Sec. 3 of Ch. 172, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 3 of Ch. 221, Laws 1957 provided the act should be in effect from and after the first day of July, 1957.

Section 2 of Ch. 172, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

### CHAPTER 26—LICENSE TAXES—TELEPHONE COMPANIES

Section 84-2601. Annual tax levied on gross income of telephone business.

84-2602. Statement and payment on gross income—certain business excluded.

#### 84-2601. Annual tax levied on gross income of telephone business.

That on and after the first day of April, 1957, there is hereby levied and shall be collected an annual tax of one and one-half per cent (1½%) of the gross income, in excess of two hundred fifty dollars (\$250.00) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

**History:** En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957.

#### Amendment

The 1957 amendment substituted "April, 1957" for "April, 1947" and raised the annual tax from 1¼% to 1½%.

**84-2602. Statement and payment on gross income—certain business excluded.** Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending September 30, 1957, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this

state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in the amount equal to one and one-half per cent ( $1\frac{1}{2}\%$ ) of such gross income.

**History:** En. Sec. 2, Ch. 94, L. 1937;  
amd. Sec. 2, Ch. 213, L. 1957.

#### Amendment

The 1957 amendment substituted "September 30, 1957" for "June 30, 1937" and "one and one-half per cent ( $1\frac{1}{2}\%$ )" for " $(1\frac{1}{4}\%)$ ."

#### Repealing Clause

Section 3 of Ch. 213, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 4 of Ch. 213, Laws 1957 provided the act should be in effect from and after the first day of July, 1957.

### CHAPTER 33—LICENSES—MOVING PICTURE THEATERS

(Repealed—Section 1, Chapter 33, Laws of 1957)

#### 84-3301 to 84-3307. Repealed.

##### Repeal

These sections (Secs. 1 to 6, 8, Ch. 91, L. 1937; amd. Sec. 1, Ch. 74, L. 1953),

relating to licenses for moving picture theaters, were repealed by Sec. 1, Ch. 33, Laws 1957, effective April 1, 1957.

### CHAPTER 38—LEVY OF TAXES

Section 84-3804. Increase of state tax levy—support units of university.

**84-3804. Increase of state tax levy—support units of university.** The rate of taxation on real and personal property for state purposes, as is hereafter defined, for each year for a period of ten (10) years beginning with the year 1959; shall be increased six (6) mills on each dollar of taxable valuation in addition to the levy which is now or may hereafter be authorized by section 9 of article XII of the constitution of the state of Montana, and the legislative assembly is authorized and empowered to levy an additional tax for state purposes for each of said years of not exceeding six (6) mills on each dollar of taxable valuation for state purposes, and all money derived from said additional levy of six (6) mills for each of said years or so much thereof as may be necessary shall be appropriated by the legislative assembly for the support, maintenance and improvement of the state university of Missoula, the state college of agriculture and mechanic arts at Bozeman, the Montana state school of mines at Butte, the western Montana college of education at Dillon, the eastern Montana college of education at Billings, and the northern Montana college at Havre, now comprising the units of the university of Montana, together with the agricultural experiment station and its branches and substations, and the agricultural extension service, including the soil survey and grain laboratory.

**History:** En. Sec. 1, Ch. 218, L. 1957. Nov. 4, 1958, effective under Governor's Referendum No. 61, approved at election proclamation on Dec. 8, 1958.



**Compiler's Notes**

This section is substituted for Sec. 1, Ch. 217, Laws 1947 and given the same section number at it covers the same subject matter. Section 1, Ch. 217, Laws 1947 was repealed by Sec. 4, Ch. 218, Laws 1957, effective Dec. 8, 1958.

Sections 2 and 3 of Ch. 218, Laws 1957 provided for submission of the act to the people at the general election of 1958.

**Effective Date and Repealing Clause**

Section 4 of Ch. 218, Laws 1957 read "This act shall be in full force and effect from and after its passage by this legislative assembly, approval by a majority

vote of the qualified electors and proclamation of the governor thereafter; provided however, nothing contained herein shall be construed to or shall in any manner effect a repeal of chapter 217 of the laws of 1947 unless a majority of all votes cast at the referendum election herein provided shall be in favor of this act. Upon approval of this act by a majority of all votes cast at the referendum election herein provided, chapter 217 of the laws of 1947 and all other acts and parts of acts in conflict herewith shall be hereby repealed." Governor's proclamation, dated December 8, 1958.

**CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS**

Section 84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after 20 years where no assignment of certificate or no action for tax deed taken.

**84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after 20 years where no assignment of certificate or no action for tax deed taken.** That from and after the passage and approval of this act, any hospital, charitable corporation, or nonprofit association having an equitable or legal interest in real estate heretofore sold for taxes or assessments to any county, or which has been struck off to any county when the property was offered for sale, or to which real property a lien for taxes or assessments has attached, and where such sale or tax lien is more than twenty (20) years old, and no assignment of the certificate of such sale or of said tax lien has been made, and no action for the issuance of a tax deed has been taken, shall be permitted to redeem the same and pay such tax lien, by paying the original tax or assessment due thereon, without the payment of any penalty or interest thereon. Such redemption of tax sale or payment of tax lien must be made on or before the 1st day of December, 1957, if it is to be made without the payment of penalty or interest. This act shall not apply to the purchaser of any certificate of sale made prior to the passage and approval of this act.

**History:** En. Sec. 1, Ch. 112, L. 1957.

**Title of Act**

An act to permit real property to be redeemed from tax sale or tax lien where such sale or lien is more than twenty (20) years old, and no assignment thereof has been made, and no proceedings for tax deed initiated, by paying the original tax or assessment, provided such original taxes or assessment be paid on or before December 1, 1957; providing for a constitutionality provision and providing for an effective date and repealing all acts and parts of acts in conflict herewith.

**Separability Clause**

Section 2 of Ch. 112, Laws 1957 read

"If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portion of this act."

**Repealing Clause**

Section 4 of Ch. 112, Laws 1957 read "All acts and parts of acts are hereby repealed."

**Effective Date**

Section 3 of Ch. 112, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

**84-4151. (2209) Notice of application for tax deed.****Affidavit**

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by this section, such affidavit was defective and hence the tax deed is fatally defective. *Bentley v. Rosebud County*, 230 F 2d 1.

**Special Assessment by Irrigation District**

Where irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under this section. *Vail v. Custer County*, 132 M 205, 315 P 2d 993, 999.

**84-4156. (2212) Affidavit showing notice given—sum allowed therefor.****Affidavit**

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by section 84-4151, such affidavit was de-

fective and hence the tax deed fatally defective. *Bentley v. Rosebud County*, 230 F 2d 1.

**References**

Cited or applied as section 2212, R. C. M. 1935 in *Marek v. Smith*, 132 M 73, 314 P 2d 864, 865.

**84-4158. (2214) Procedure in actions to quiet title to tax deed property.****Deposit of Taxes and Other Costs**

Where order was entered in conformity with opinion of supreme court, requiring plaintiff to pay to defendant certain sum and reciting that if plaintiff refused to deposit sum by specified date, judgment would be entered for defendant quieting title in him and motion of plaintiff to vacate such order was not brought on for hearing for more than 12 years after it was made, laches of plaintiff barred relief. *State ex rel. Johnstone v. District Court*, 132 M 377, 319 P 2d 957, 959.

hearing to fix the amount of taxes, interest, penalties, and money spent in improving the property and requiring a deposit of such amount does not authorize the court to postpone such determination and merely requires a bond be deposited to cover such amount. The court's duty is to determine the amount necessary for plaintiff to deposit in court and then fix the time for its payment. *State v. District Court*, 130 M 103, 295 P 2d 1042, 1044.

**References**

Cited or applied in *Marek v. Smith*, 132 M 73, 314 P 2d 864, 866.

**Order Requiring Deposit**

This section, requiring the court upon

**84-4160.1. (2214.2) Validation of tax deeds.****History Correction**

History: En. Sec. 1, Ch. 79, L. 1933; amd. Sec. 1, Ch. 132, L. 1937; amd. Sec. 1, Ch. 94, L. 1939; amd. Sec. 1, Ch. 105, L. 1939; amd. Sec. 1, Ch. 171, L. 1947.

**84-4168. (2215.7) Judgment—order to issue tax deed to plaintiff, etc.****Collateral Attack**

Decree in favor of plaintiff, son of deceased, in action to procure tax deed could not be collaterally attacked in condemnation proceedings on the ground of defective service where it was expressly found that defendant son, and the administrator of the estate of the deceased, were

the same person and that all defendants had been duly and legally served and there was no suggestion that creditors of the deceased or estate yet remained to be paid, or that final settlement of the estate would be dependent upon this asset. *United States v. Hoerner*, 157 F Supp 563, 564, 566.

**84-4170. (2215.9) Effect of deed.****Void Assessment**

Where county assessed tax on minerals

and mineral rights under the land but did not assess a tax on the party's right of

entry for mining purposes, a tax deed based on such proceeding was void since under Const. Art. XII, sec. 3 the minerals or mineral rights cannot be taxed. *Lehfeldt v. Adams*, 130 M 395, 303 P 2d 934.

**84-4176. (2222) Taxes, etc., illegally collected to be refunded.**

**References**

Cited or applied in *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, 981.

**84-4180. (2225) What mistakes do not affect sale of property for taxes.**

**Due Process**

Tax sale is a proceeding in rem against the property itself and not in personam. Thus a notice with description of the property accurately contained therein suffices to support any requirements of due process. *Meyer v. Chessman*, 132 M 187, 315 P 2d 512, 514.

quired no property rights in disputed land by deed from transit company because at the time they received deed transit company had already been divested of title in proceedings for the taking of a tax deed. *Meyer v. Chessman*, 132 M 187, 315 P 2d 512, 514.

**References**

**Proceedings for Tax Sale**

Defendants in quiet title action ac-

Cited in *Vail v. Custer County*, 132 M 205, 315 P 2d 993, 999.

**84-4190. Sale of county tax deed lands—procedure—preferential, etc.**

**References**

Cited in *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

**84-4193. Unsold land—how disposed of—interest rate.**

**References**

Cited in *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

CHAPTER 45—PROTEST PAYMENT OF TAXES—ACTION TO RECOVER

**84-4502. (2269) Payment of taxes under protest—action to recover.**

**Complaint Insufficient**

Taxpayer's complaint to recover excessive taxes paid under protest failed to state a cause of action where it failed to allege that application to the county board of equalization for reduction in assessment before resorting to court, or appeared before county board, state board of equalization or anyone charged with

the equalization of taxes, and defendant's demurrer should have been sustained. *Blair v. Potter*, 132 M 176, 315 P 2d 177, 178, 180.

**References**

Cited in *Great Northern Railway Co. v. Roosevelt County*, — M —, 332 P 2d 501, 504.

**84-4503. (2270) Assessment for taxation—increase over statement, etc.**

**Sole Remedy for Over-valuation**

Where a person is liable to taxation for personal and real property, his sole remedy for an over-valuation and over-taxation is by the statutory procedure of appearing before the proper taxing boards

in the first instance. *Blair v. Potter*, 132 M 176, 315 P 2d 177, 181.

**References**

Cited in *Great Northern Railway Co. v. Roosevelt County*, — M —, 332 P 2d 501, 504.

**84-4504. (2272) Other remedies superseded.**

**References**

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 180.



## CHAPTER 47—CITIES AND TOWNS—TAXATION AND LICENSE

Section 84-4711. Qualifications for voting on creation or increasing municipal or school indebtedness.

## 84-4701. (5194) Limitation on amount of tax for municipal purposes, etc.

## References

Cited in *Hill v. Billings*, — M —, 328 P 2d 1112, 1116.

84-4711. (5199.1) **Qualifications for voting on creation or increasing municipal or school indebtedness.** That from and after the passage and approval of this act, only such registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof; provided however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another city, town, school district or other municipal corporation.

**History:** En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; amd. Sec. 1, Ch. 126, L. 1959. district or municipal corporation and voting in another.

## Effective Date

## Amendment

The 1959 amendment added at the end of the section the proviso concerning persons residing in one city, town, school

Section 2 of Ch. 126, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 5, 1959.

## CHAPTER 49—INCOME TAX

- Section 84-4901. Income tax—definitions.  
 84-4902. Rate of income tax.  
 84-4903. Tax on nonresident.  
 84-4903.1. Collection of tax from nonresidents—withholding authorized.  
 84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state board of equalization.  
 84-4903.3. Exceptions from withholding requirements.  
 84-4903.4. Withholding agent.  
 84-4903.5. Quarterly payment by withholding agent—exception.  
 84-4903.6. Modification of withholding provisions.  
 84-4903.7. Failure to withhold or pay—penalties.  
 84-4903.8. Board may require withholding agent to make return and pay tax at any time.  
 84-4903.9. Amounts withheld as lien against agent—priority.  
 84-4903.10. Rights of nonresident.  
 84-4903.11. Nonresident ad valorem taxpayers—list—duty of county assessor.  
 84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare.  
 84-4903.13. Rules and regulations.  
 84-4907.1. Veterans' bonus—exemption from income tax law.  
 84-4910. Exemptions.  
 84-4911. Income tax involving partnership—partnership statements required.  
 84-4914. Returns and payment of tax—penalty and interest—refunds—credits.  
 84-4915. Exemption allowed nonresident—effect of changing resident status.  
 84-4923.1. Review by court.

- 84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states.  
 84-4943. Deduction and withholding of tax from wages—amount.  
 84-4956. Credits and refunds.  
 84-4957. Income tax refund account.

**84-4901. (2295.1) Income tax—definitions.** For the purpose of this act unless otherwise required by the context:

- (1). \* \* \* [Same as parent volume.]  
 (2) The word “taxpayer” includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this act, and does not include corporations.  
 (3) to (7). \* \* \* [Subdivisions (3) to (7), same as parent volume.]  
 (8) The words “foreign country” or “foreign government” mean any jurisdiction other than one embraced within the United States. The words “United States” include the states, the territory of Hawaii, and the District of Columbia.  
 (9). \* \* \* [Same as parent volume.]  
 (10). \* \* \* [Same as parent volume.]  
 (11) The term “taxable income” means the gross income of a taxpayer less the deductions and exemptions provided for in this act.

**History:** En. Sec. 1, Ch. 181, L. 1933;  
 amd. Sec. 1, Ch. 166, L. 1947; amd. Sec.  
 1, Ch. 253, L. 1959.

#### Amendment

The 1959 amendment in subd. (2) inserted the words “resident or nonresident”; in subd. (8) substituted “the territory of Hawaii” for “the territories of Alaska and Hawaii” and added subd. (11).

**84-4902. (2295.2) Rate of income tax.** There shall be levied, collected and paid for each taxable year upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

- (a) On the first one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of one per centum (1%);  
 (b) On the next one thousand dollars (\$1,000.00) of taxable income, or [any] part thereof, at the rate of two per centum (2%);  
 (c) On the next one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of three per centum (3%);  
 (d) On the next two thousand dollars (\$2,000.00) of taxable income, or any part thereof, at the rate of four per centum (4%);  
 (e) On the next two thousand dollars (\$2,000.00) of taxable income, or any part thereof, at the rate of five per centum (5%);  
 (f) On any taxable income in excess of seven thousand dollars (\$7,000.00) at the rate of seven per centum (7%).

**History:** En. Sec. 2, Ch. 181, L. 1933;  
 amd. Sec. 1, Ch. 40, Ex. L. 1933; amd.  
 Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch.  
 265, L. 1959.

#### Amendments

The 1957 amendment completely revised the rates of income tax (subs. (a) to (h)). For this portion of this section before amendment see parent volume.

The 1959 amendment substituted “taxable income” for “net income” each time it appears in this section; substituted “taxpayer” for “individual” and “exemptions” for “exceptions” in the preliminary sen-

#### Compiler's Note

The bracketed word “any” in subd. (b) was inserted by the compiler.

tence; raised the rate in subd. (b) from  $1\frac{1}{2}\%$  to  $2\%$ ; raised the rate in subd. (c) from  $2\%$  to  $3\%$ ; substituted \$2,000 for \$1,000 and raised the rate from  $2\frac{1}{2}\%$  to  $4\%$  in subd. (d); substituted \$2,000 for \$1,000 and raised the rate from  $3\%$  to  $5\%$  in subd. (e); and substituted subd. (f) for former subds. (f), (g) and (h) which read as follows: "(f) On the next one thousand dollars (\$1,000.00) of net income, or any part thereof, at the rate of three and one-half per centum ( $3\frac{1}{2}\%$ ); (g) On the next one thousand dollars (\$1,000.00) of net income, or any part thereof, at the rate of four per centum ( $4\%$ ); (h) On any net income in excess of seven thousand dollars (\$7,000.00) at the rate of five per centum ( $5\%$ )."

### Repealing Clauses

Section 2 of Ch. 228, Laws 1957 and Sec. 2 of Ch. 265, Laws 1959 repealed all acts or parts of acts in conflict therewith.

### Effective Dates

Section 3 of Ch. 228, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

Section 3 of Ch. 265, Laws 1959 read "This act shall be in full force and effect from and after December 31, 1959."

**84-4903. (2295.3) Tax on nonresident.** (a) A like tax is imposed upon every person not resident of this state which tax shall be levied, collected and paid annually, at the rates specified in section 84-4902, with respect to his entire net income as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state.

(b) In the case of a nonresident officer or director of a corporation doing business in this state, such salaries, fees, or other compensation of such officer or director paid to him by such corporation shall be treated as income from sources within this state to the extent such salary, fee or other compensation is claimed as a deduction in computing income for Montana corporation license tax purposes, whether or not any personal services have been performed by such nonresident officer or director within this state.

**History:** En. Sec. 3, Ch. 181, L. 1933; amd. Sec. 2, Ch. 253, L. 1959.

### Amendment

The 1959 amendment in subd. (a) de-

leted the words "except as hereinafter provided," which appeared after the words "herein defined"; deleted from the end of the subdivision the words "by such person" and added all of subd. (b).

**84-4903.1. Collection of tax from nonresidents—withholding authorized.** In order to insure collection, in the manner and to the extent provided by section 84-4907, Revised Codes of Montana, 1947, as amended, of the income tax imposed upon the income of nonresidents by section 84-4903, Revised Codes of Montana, 1947, withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state board of equalization as partial payment of such nonresidents' income tax in the manner set forth in the following sections shall be, and hereby is, required.

**History:** En. Sec. 1, Ch. 208, L. 1959.

### Title of Act

An act to insure collection of the Montana state income tax upon the income of nonresidents, and to provide for withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state board of equal-

ization as partial payment of such nonresidents' income tax; to provide that certain types of payments shall not be subject to withholding under this act; to provide for the method of collection and payment of amounts withheld; to provide for and define the duties of withholding agents under the act and penalties for failure of



such agents to withhold or pay; and to provide for the powers and duties of the state board of equalization, county assess-

sors, and county clerks and recorders under this act, and providing a saving clause.

**84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state board of equalization.** Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, Revised Codes of Montana, 1947, or for casual sales of property, either real or personal, located within the state of Montana, or for leases, rentals or royalties derived from property located within the state of Montana, or any prizes or winnings payable from or within the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state board of equalization, not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state board of equalization as partial payment of such nonresident's income tax.

**History:** En. Sec. 2, Ch. 208, L. 1959.

**84-4903.3. Exceptions from withholding requirements.** Payments made for livestock or agricultural products raised or grown outside Montana, and sold at a market within this state shall not be subject to withholding under this act.

**History:** En. Sec. 3, Ch. 208, L. 1959.

**84-4903.4. Withholding agent.** Every such person, firm, etc. required to withhold such payments under the provisions of section 2 [84-4903.2] above preceding shall be known as a withholding agent within the meaning of this act.

**History:** En. Sec. 4, Ch. 208, L. 1959.

**84-4903.5. Quarterly payment by withholding agent—exception.** Withholding agents required to deduct and withhold tax payments under the provisions of section 2 [84-4903.2] shall remit such payments quarterly to the state board of equalization, beginning July 1st, 1959 and for each quarterly period thereafter on or before the last day of the month following the close of such quarterly period.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 2 [84-4903.2] shall amount to less than ten dollars (\$10.00) in each quarterly period of any year, such withholding agent shall not be required to file the quarterly returns or to make the quarterly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and

withheld by such withholding agent from all payments paid during the preceding calendar year.

**History:** En. Sec. 5, Ch. 208, L. 1959.

**84-4903.6. Modification of withholding provisions.** The conditions set forth in section 2 [84-4903.2] may be modified by the state board of equalization provided:

(a) The withholding agent shall insure the board by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements insofar as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state board of equalization under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state board of equalization shall determine the amount to be withheld.

**History:** En. Sec. 6, Ch. 208, L. 1959.

**84-4903.7. Failure to withhold or pay—penalties.** If any withholding agent knowingly fails to withhold or pay to the state board of equalization any sums required by this act to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924, Revised Codes of Montana, 1947, with respect to failure to make a return of income or to pay any income tax; and any individual, corporation or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924, Revised Codes of Montana, 1947, with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

**History:** En. Sec. 7, Ch. 208, L. 1959.

**84-4903.8. Board may require withholding agent to make return and pay tax at any time.** If the state board of equalization in any case has reason to believe that the collection of the tax provided for in this section is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time.

**History:** En. Sec. 8, Ch. 208, L. 1959.

**84-4903.9. Amounts withheld as lien against agent—priority.** In addition to the penalties above-provided, if any withholding agent shall withhold any sums required to be withheld and paid over to the state board of equalization under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent.

**History:** En. Sec. 9, Ch. 208, L. 1959.

**84-4903.10. Rights of nonresident.** No nonresident taxpayer shall have any right of action against a withholding agent on account of any moneys withheld and paid over to the state board of equalization under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purposes of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding.

**History:** En. Sec. 10, Ch. 208, L. 1959.

**84-4903.11. Nonresident ad valorem taxpayers—list—duty of county assessor.** It shall be the duty of the county assessor of every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state board of equalization after the completion of the roll on the second Monday in July but not later than September thirtieth of each year.

**History:** En. Sec. 11, Ch. 208, L. 1959.

**84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare.** It shall be the duty of the county clerk and recorder of every county in this state to prepare monthly a list showing such information as may be prescribed by the state board of equalization with respect to each loan made to a nonresident upon grain for which a chattel mortgage has been filed in his office and such list shall be mailed to the state board of equalization not later than the tenth day of the month following.

**History:** En. Sec. 12, Ch. 208, L. 1959.

**84-4903.13. Rules and regulations.** The state board of equalization is hereby empowered to make all necessary rules and regulations for carrying out and enforcing this act.

**History:** En. Sec. 13, Ch. 208, L. 1959.

#### **Separability Clause**

Section 14 of Ch. 208, Laws 1959 read  
"If any portion, section, subsection, para-

graph, sentence, clause or phrase of this act is for any reason held to be unconstitutional which [such] decision shall not affect the remainder of the act."

**84-4905. (2295.5) Adjusted gross income.**

### **DECISIONS UNDER FORMER LAW**

#### **Breeding Animals Not a Capital Asset**

In 1951 no preferential treatment was accorded by any state statute to gains from the sale or exchange of breeding animals or any other property held for productive use in a trade or business. (Sec. 1, Ch. 148, Laws 1935, R. C. M. 1947, 84-4934, Repealed by Sec. 15, Ch. 260, Laws 1955.) In re Armstrong's Estate, 133 M 328, 323 P 2d 596.

Under the former statute requiring that the final closing return of a decedent be made on an inventory basis the same as fixed for inheritance tax purposes, Sec.

1, Ch. 167, Laws 1947, unsold breeding animals valued in inventory were not to be treated as a capital asset but were to be treated as property held for sale in computing taxable income. In re Armstrong's Estate, 133 M 328, 323 P 2d 596.

#### **Constitutionality**

This section, before the 1955 amendment, was not unconstitutional as taxing something which was not income or taxing accretion in capital asset items. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228, 231.



**Not Retrospective**

In the absence of any language in the 1955 Act warranting a retrospective application the court could not decide a 1951 tax case in accordance with federal statutes and decisions. In re Armstrong's Estate, 133 M 328, 323 P 2d 596, 597.

**Purpose of Section**

In enacting this section, before the 1955 amendment, the legislature was seeking tax equality. State ex rel. Anderson v.

State Board of Equalization, 133 M 8, 319 P 2d 221, 230.

**Valuation of Closing Inventory**

Valuation of closing inventory of estate of decedent under this section, before the 1955 amendment, by three unbiased appraisers was required by sections 91-2201, 91-2202. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

**84-4906. (2295.6) Deductions allowed in computing net income.****References**

Cited in State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

**84-4907. (2295.7) Nonresident taxpayers.****References**

Cited in State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228.

**84-4907.1. Veterans' bonus—exemption from income tax law.** All payments made under the Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the board, in the same manner as other income tax refund claims are paid.

**History:** En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957.

**Amendment**

The 1957 amendment inserted the words "under the Korean Bonus Law and the" and deleted the words "pursuant to Initia-

tive No. 54, more commonly known as the" which appeared before the words "Veterans' Bonus Law" and deleted the words "the effective date of which was December 6, 1950," which appeared after the words "Veterans' Bonus Law."

**84-4910. (2295.10) Exemptions.** (a) Allowance of Personal Exemption. In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and Spouse. An exemption of six hundred dollars (\$600.00) for the taxpayer; and an additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer, if the spouse, for the calendar year in which the taxable year of the taxpayer begins, is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of six hundred dollars (\$600.00) for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer if the spouse has attained the age of sixty-five (65) before the close of such taxable year, and, for the calendar

year in which the taxable year of the taxpayer begins, is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred dollars (\$600.00) for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins is not the dependent of another taxpayer. For the purpose of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred dollars (\$600.00) for each dependent:

(A) Whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than six hundred dollars (\$600.00), or

(B) Who is a child of the taxpayer and who (i) has not attained the age of nineteen (19) at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined. For purposes of paragraph (1) (B), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) Student and educational institution defined. For purposes of paragraph (1) (B) (ii), the term "student" means an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins

(A) Is a full time student at an educational institution; or

(B) Is pursuing a full time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state.

For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(f) General Definition. For purposes of this section, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

- (1) A son or daughter of the taxpayer, or a descendant of either,
- (2) A stepson or stepdaughter of the taxpayer,
- (3) A brother, sister, stepbrother, or stepsister of the taxpayer,
- (4) The father or mother of the taxpayer, or an ancestor of either,
- (5) A stepfather or stepmother of the taxpayer,
- (6) A son or daughter of a brother or sister of the taxpayer,
- (7) A brother or sister of the father or mother of the taxpayer,
- (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,
- (9) An individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, or
- (10) An individual who
  - (A) is a descendant of a brother or sister of the father or mother of the taxpayer,
  - (B) for the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and
  - (C) before receiving such institutional care, was a member of the same household as the taxpayer.

(g) Rules Relating to General Definition. For purposes of this section

(1) The terms "brother" and "sister" include a brother or sister by the halfblood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(h) Determination of Marital Status. For purposes of this part

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(i) Proration of exemption in the case of a nonresident taxpayer or a taxpayer changing residence status.

(1) The exemption shall be prorated on the ratio the Montana adjusted gross income bears to the federal adjusted gross income.

**History:** En. Sec. 10, Ch. 181, L. 1933; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959.

#### Amendments

The 1957 amendment completely re-wrote this section. For section prior to amendment see parent volume.

The 1959 amendment, in the heading for subd. (a), substituted "personal exemption" for "deductions"; in subd. (b) deleted the words "if a separate or joint return is made by the taxpayer" which appeared after the words "spouse of the taxpayer"; in subds. (c)(2) and (d)(2) deleted the words "if a separate return is made by the taxpayer" which appeared



in each instance after the words "spouse of the taxpayer"; in subd. (d)(2) deleted the words "has no gross income" which appeared before the words "is not a dependent" and added all of subd. (i).

#### Repealing Clause

Section 2 of Ch. 233, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 233, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

**84-4911. (2295.11) Income tax involving partnership — partnership statements required.** Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.

**History:** En. Sec. 11, Ch. 181, L. 1933; amd. Sec. 5, Ch. 260, L. 1955; amd. Sec. 4, Ch. 253, L. 1959.

#### Amendment

The 1959 amendment substituted the present last sentence for two sentences which read "Taxpayers who are members

of partnerships may be required by the department to make a return stating the gross receipts and net gains or profits of the partnership for any taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as provided in computing the net income of individuals."

**84-4914. (2295.14) Returns and payment of tax—penalty and interest—refunds—credits.** (1) Every taxpayer having a gross income for the taxable year of six hundred dollars (\$600.00) or over, if single or if married and not living with or supporting a husband or wife or family, or of twelve hundred dollars (\$1,200.00) or over, if married and living with husband or wife, shall be liable for an income tax return, to be filed on such forms and according to instructions set forth by the board.

If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(2) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939, and 84-4943 as amended shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943 as amended and/or any payment made by reason of an estimated tax return provided for in section 84-4939 as amended, provided however, the tax so computed is greater by one dollar (\$1.00) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar (\$1.00) the amount of the income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(3) As soon as practicable after the return is filed, the board shall examine and verify the tax.

(4) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of one per centum (1%) per month or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars (\$2.00). Interest will be computed at the rate of one per centum (1%) per month for each month or fraction thereof on the additional assessment with penalty added. Except unless otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of six per centum (6%) per annum from the time when the return was originally required to be filed to the time of payment.

**History:** En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959.

#### Amendments

The 1957 amendment divided this section into subdivisions adding new subds. (2) to (4). Subdivision (1) which was formerly the first paragraph has been substantially changed. For text of this paragraph before amendment see parent volume.

The 1959 amendment, is subd. (1) substituted the word "taxpayer" for "person" each time it appears; substituted "gross income" for "net income" the first time it appears and deleted the words "or if he is the head of a family, or a gross income for the taxable year of twelve hundred dollars (\$1,200.00) or over, regardless of the amount of his net income" which appeared after the words "living with husband or wife."

**84-4915. (2295.15) Exemption allowed nonresident—effect of changing resident status.** If a taxpayer changes his status from that of resident to that of nonresident, or from that of nonresident to that of resident, during the taxable year, he shall file a return covering the fraction of the year during which he was a resident. The exemptions provided in section 84-4910 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state; abandoning his residence in the state and establishing a residence elsewhere, must file a return on the fractional basis. If he obtains employment outside the state, without abandoning his Montana residence then income from such employment is taxable in Montana.

**History:** En. Sec. 15, Ch. 181, L. 1933; amd. Sec. 9, Ch. 260, L. 1955; amd. Sec. 6, Ch. 253, L. 1959.

#### Amendment

The 1959 amendment in the second sentence substituted "on the ratio the Montana adjusted gross income bears to federal adjusted gross income" for "according to time in this state."

**84-4920. (2295.20) Revision of return—time for determining tax, etc.****Construction Prior to Amendment**

The provision of this section, before the 1955 amendment, commanding a particular act to be done for the protection of the taxpayer, viz., assessment within three years, must be construed in favor of the taxpayer. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 224.

This section, before the 1955 amendment did not constitute a statute of limitations, but rather a limitation upon the authority of the state board of equalization to reassess returns after the expira-

tion of three years from the date the return is made. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 226.

**Limitation on Reassessment**

Although this section does not constitute a statute of limitations, it is a limitation upon the authority of the board of equalization to reassess returns after the expiration of three years from the date the return was filed. State ex rel. Conn. v. Robinson, 133 M 549, 327 P 2d 390, 391.

**84-4922. (2295.22) Revision—application—hearing—adjustment.****Filing of Claim**

Respondent paid additional tax under protest on June 12, 1953. Within the two years granted by this section, he applied for a revision, filing claim on July 24, 1954, setting forth the contended invalidity

of the assessment. The claim was filed on a form provided by the board of equalization for refund of tax illegally collected. This was a sufficient compliance with the statute. State ex rel. Conn. v. Robinson, 133 M 549, 327 P 2d 390, 391.

**84-4923. (2295.23) Repealed.****Repeal**

This section (Sec. 23, Ch. 181, L. 1933; amd. Sec. 2, Ch. 58, L. 1955), relating to

review of board's findings on application for revision, was repealed by Sec. 2, Ch. 212, Laws 1957.

**84-4923.1. Review by court.** The determination of the state board of equalization may be reviewed in the district court for Lewis and Clark county or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state board of equalization within six (6) months after the receipt of notice of the decision of the state board of equalization. Upon the serving of summons upon the state board of equalization as in civil action, the cause shall proceed as other civil cases. Service upon the state board of equalization may be made by serving one copy upon the secretary of the state board of equalization or one copy upon the chairman of the state board of equalization. The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party.

**History:** En. Sec. 1, Ch. 212, L. 1957.

**Title of Act**

An act providing for review by the court of any determination of the board of equalization in respect to income taxes and repealing section 84-4923, Revised

Codes of Montana, 1947, and containing a repealing clause.

**Repealing Clause**

Section 2 of Ch. 212, Laws 1957 repealed section 84-4923 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict therewith.

**DECISIONS UNDER FORMER LAW****Review of Reassessment**

Where board of equalization rejected claim of taxpayer, on August 18, 1954, for return of illegally collected tax, it constituted the determination of the board upon

the application for revision made by respondent and was reviewable by district court under Sec. 23, Ch. 181, Laws 1933, where respondent applied for writ of



certiorari on September 11, 1954, within the 30 day limitation provided in section

23. State ex rel. Conn v. Robinson, 133 M 549, 327 P 2d 390, 391.

#### 84-4924. (2295.24) Penalties for violations of act.

##### Constitutionality

The double penalty imposed under subd. (2) of this section, before the 1955 amendment, did not violate sections 20, 27, article III, of the Montana Constitution

as an excessive fine or the taking of property without due process of law. State ex rel. Hardy v. State Board of Equalization, 133 M 43, 319 P 2d 1061, 1063, 1065.

#### 84-4925. (2295.25) Repealed.

##### Repeal

This section (Sec. 25, Ch. 181, L. 1933; amd. Sec. 1, Ch. 78, L. 1951), relating to

payment, penalty, interest, and refund of excess payment of tax, was repealed by Sec. 4, Ch. 227, Laws 1957.

**84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states.** Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for income taxes imposed by and paid to another state or country on income taxable under this act.

(1) The credit shall be allowed only for taxes paid to such other state on income derived from sources within such state which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient;

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state for taxes paid or payable under this act;

(3) The allowable credit shall be computed by formula to be prescribed by the board.

**History:** En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959.

constitutional or void the remainder of this act shall continue in full force and effect."

##### Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

##### Severability Clause

Section 8 of Ch. 253, Laws 1959 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, clauses or parts be held un-

##### Repealing Clause

Section 9 of Ch. 253, Laws 1959 repealed all acts and parts of acts in conflict therewith.

##### Effective Date

Section 10 of Ch. 253, Laws 1959 read "The provisions of this act shall apply to taxable years ending after June 30, 1959."

**84-4943. Deduction and withholding of tax from wages—amount.** Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the board. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

**History:** En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957.

##### Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

##### Repealing Clause

Section 4 of Ch. 227, Laws 1957 read "That section 84-4925 of the Revised Codes of Montana, 1947, as amended by section 1 of chapter 78 of the Laws of 1951, section 84-4944 of the Revised Codes of Montana, 1947, being section 3 of chapter 246 of the Laws of 1955, section 84-4949 of the Revised Codes of Montana,

1947, being section 3 of chapter 246 of the Laws of 1955, section 84-4952 of the Revised Codes of Montana, 1947, being section 11 of chapter 246 of the Laws of 1955, and all acts and parts of acts in conflict herewith are hereby repealed."

#### Effective Date

Section 5 of Ch. 227, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

#### 84-4944. Repealed.

##### Repeal

This section (Sec. 3, Ch. 246, L. 1955), relating to the adjustment and amount of

wages exempt, was repealed by Sec. 4, Ch. 227, Laws 1957.

#### 84-4949. Repealed.

##### Repeal

This section (Sec. 8, Ch. 246, L. 1955),

relating to the short form return, was repealed by Sec. 4, Ch. 227, Laws 1957.

#### 84-4952. Repealed.

##### Repeal

This section (Sec. 11, Ch. 246, L. 1955), relating to including withholding tax de-

ductions in gross income, was repealed by Sec. 4, Ch. 227, Laws 1957.

**84-4956. Credits and refunds.** Where there has been an overpayment of any income tax imposed by this chapter, the amount of such overpayment shall be credited against any income tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

No such credit or refund shall be allowed or made after three (3) years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer. Within six (6) months after the claim is filed the state board of equalization shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the said taxpayer and shall grant a hearing thereon before the state board of equalization. If the board disapproves a claim for refund, review of the determination of the board may be had as otherwise provided in this chapter.

**History:** En. Sec. 1, Ch. 138, L. 1957.

the court, by the taxpayer and containing a repealing clause.

##### Title of Act

An act relating to credits and refunds; providing for the period within which claim must be made; providing for a hearing upon the claim and for review by

##### Repealing Clause

Section 2 of Ch. 138, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**84-4957. Income tax refund account.** There is hereby established a special fund designated "Income Tax Refund Account." All money received by the state treasurer in payment of taxes levied under the provisions of state income tax shall be deposited in said fund. All money so collected and deposited in the "Income Tax Refund Account," or so much thereof as is necessary, shall be used for the purpose of making such refunds as are authorized by the Montana income tax law and are hereby appropriated for this purpose. All unexpended balances in excess of one hundred thousand dollars (\$100,000.00) on hand in said fund at the end of each calendar month shall be deposited to the credit of the state

general fund and the state public school equalization fund in the proportions specified in section 84-1901, Revised Codes of Montana, 1947.

**History:** En. Sec. 1, Ch. 211, L. 1957.

**Title of Act**

An act providing for an income tax refund account and containing a repealing clause.

**Repealing Clause**

Section 2 of Ch. 211, Laws 1957 repealed all acts or parts of acts in conflict therewith.

CHAPTER 54—MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Section 84-5403. Net proceeds—how computed.

84-5408. Transmission of net proceeds to county assessor.

84-5409. Taxation and payment on royalty interests.

**84-5401. (2088) Taxation of mines.**

**Net Proceeds**

In determining the net proceeds under the provisions of sections 84-5402 and 84-5403, the gross product received under section 84-5403 is the amount paid to the producer. Hence, where producer received price of \$63 a ton from general services administration while the New York market price was only \$35 a ton; the total amount received by the producer

is to be used. The difference between the market price and the price received is not to be considered a government bonus or subsidy as the producer was not required to sell to the government. *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977. This case expressly overrules *Klies v. Linnane*, 117 M 59, 156 P 2d 183.

**84-5402. (2089) Net proceeds tax—statement of yield.**

**References**

Cited or applied in *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, 978.

**84-5403. (2090) Net proceeds—how computed.** The state board of equalization shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to wit:

1. All royalty paid or apportioned in cash or in kind by the person, corporation or association so engaged in mining.

2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.

3. All moneys expended for improvements, repairs and betterments necessary in and about the working of the mine, except as hereinafter provided.

4. All moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine.

5. Depreciation in the sum of six per cent (6%) of the assessed valuation of such milling and reduction works for the calendar year for which such return is made.

6. All moneys actually expended for transporting the ores, and mineral



products or deposits from the mines to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money.

7. All moneys expended for fire insurance and workmen's compensation insurance, and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees.

In computing the deductions allowable for repairs, improvements and betterments to the mine, the state board of equalization shall compute and allow ten per cent (10%) of such cost each year for a period of ten (10) years.

No moneys invested in mines or improvements shall be allowed as a deduction unless all machinery, equipment and buildings represented by such moneys shall be returned to the county assessor of the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, and except as hereinbefore provided in this section, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

**History:** En. Sec. 2, Ch. 237, L. 1921; re-en Sec. 2090, R. C. M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959.

the words "and except as hereinbefore provided in this section" in the last paragraph.

#### **Gross Product—What Included In**

Where producer received price of \$63 a ton from general services administration while market price was only \$35 a ton the difference between the market price and the price received is not to be considered a government bonus or subsidy since the producer was free to sell to anyone and the entire price was to be included in determining the value of the gross product. *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977. This case expressly overrules *Klies v. Linnane*, 117 M 59, 156 P 2d 183.

#### **Amendment**

The 1959 amendment, in the first paragraph, substituted the words "covered by the statement" for the words "preceding the first day of January"; added the words "except as hereinafter provided" at the end of subd. 3; inserted the word "actually" in subd. 6; added the two paragraphs next to the last paragraph; and inserted

### **84-5407. (2090.4) False or fraudulent reports, procedure in case of.**

#### **References**

Cited or applied in *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, 981.

**84-5408. (2091) Transmission of net proceeds to county assessor.** On or before the first day of July in each year the state board of equalization shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by such state board of equalization. The said valuation for the purpose of taxation shall be an amount equal to the average net proceeds from such mine for the five calendar years next preceding,

or for as many years next preceding as the mine has produced gross yield, or for as many years next preceding as this act has been in effect, whichever is less. The average net proceeds for valuation shall be computed by dividing the total net proceeds for such period by the number of years for which such net proceeds were taken into account. In determining net proceeds of each individual year for averaging to determine valuation for purposes of taxation, the actual annual net proceeds as defined in section 84-5403 of the Revised Codes of Montana, 1947, including losses, if any, from such mines and mining claims shall be taken for each year rather than the average valuation for such year. In no event shall there be valuation for the purpose of taxation for a year when there has been no gross yield from such mines and mining claims for the preceding average years and such years shall not be taken into account in computing the net proceeds for any year. The county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1. The name and address of the owner or lessee of the mine.
2. The description and location of the mine.
3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.
4. The gross value of the ores, mineral products or deposits, in dollars and cents, extracted and treated, or sold during the year, to be determined as provided in the preceding section.
5. The net proceeds, in dollars and cents, of such mine or mining claims during the years, to be determined as provided in the preceding section.

The form of said assessment roll shall be prescribed by the state board of equalization in conformity with the provision of this act.

**History:** En. Sec. 3, Ch. 237, L. 1921; re-en. Sec. 2091, R. C. M. 1921; amd. Sec. 5, Ch. 188, L. 1935; amd. Sec. 1, Ch. 67, L. 1945; amd. Sec. 1, Ch. 181, L. 1959.

#### **Amendment**

The 1959 amendment divided into two sentences what was formerly the first sentence of the section and inserted as new matter between the two the present second, third, fourth, and fifth sentences.

#### **Repealing Clause**

Section 2 of Ch. 181, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 181, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

#### **References**

Cited or applied in *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, 978.

**84-5409. (2091.1) Taxation and payment on royalty interests.** At the time of transmitting net proceeds assessments the state board of equalization shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, upon which

date said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines.

**History:** En. Sec. 6, Ch. 188, L. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959.

#### Repealing Clause

Section 4 of Ch. 257, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1959 amendment substituted the word "assessor" for "clerk" each time it appears; substituted "fifteenth day of September" for "twentieth day of August"; deleted the former 2nd, 3rd, and 4th sentences, for text of which see parent volume and changed the form of this section. What are now the last two sentences was formerly the second paragraph.

#### Effective Dates

Section 3 of Ch. 257, Laws 1959 read "The provisions of this act shall apply to the returns required to be filed in 1959 and for each year thereafter."

Section 5 of Ch. 257, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 13, 1959.

### CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS

- Section 84-5601. Definitions.  
 84-5602. Distributors' and dealers' license—application—fees.  
 84-5606. The tax.  
 84-5607. Affixing of insignia.  
 84-5608. Insignia purchased at discount.  
 84-5609. Use of tax stamping meters.  
 84-5621. Clerical and field assistants.

**84-5601. Definitions.** As used in this act, the following definitions shall apply unless the context otherwise requires:

(a) The word "board" shall mean the state board of equalization of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization, or association however formed.

(c) The word "insignia" shall mean the impression or mark approved by the state board of equalization, under the provisions of this act.

(d) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to distributors and retailers in original cases.

(e) The word "distributor" shall mean any person engaged in the business of producing or manufacturing cigarettes or importing any thereof into this state, for purpose of distribution or sale.

(f) The words "licensed distributor" shall mean distributor duly licensed under the provisions of this act.

(g) The word "dealer" shall mean any person other than a distributor, who is engaged in the business of selling cigarettes at retail, including persons who sell cigarettes at retail through cigarette vending machines.



(h) The words "licensed dealer" shall mean any person other than a distributor, who is duly licensed under the provisions of this act.

(i) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, gift, barter or exchange.

**History:** En. Sec. 1, Ch. 289, L. 1947; amd. Sec. 1, Ch. 18, L. 1957.

#### Amendment

The 1957 amendment deleted former subd. (c) for text of which see parent volume and relettered subds. (d) to (j) as subds. (c) to (i); in subd. (c) [former

(d)] deleted the words "used in lieu of stamps" which appeared after the word "equalization" and in subd. (g) [former (h)] substituted the words "including persons who sell cigarettes at retail through" for the words "and shall also mean."

**84-5602. Distributors' and dealers' license—application—fees.** Every such distributor or dealer shall secure a license from the board before engaging in the business of distributor or dealer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by each distributor or dealer within the state of Montana. Cigarette vending machines shall not be considered to be places of business but a separate application and a separate license shall be required for each cigarette vending machine owned, controlled or operated within the state of Montana. Application for such license shall be made on forms prescribed by the board, which shall state the name and address of the applicant, the name, address and place of business to be licensed, the type of business, or such other information as the board may require for the proper administration of this act. Each application for a distributor's license shall be accompanied by a fee of fifteen dollars (\$15.00). Each application for a dealer's license shall be accompanied by a fee of five dollars (\$5.00). No dealer shall be granted a distributor's license except a dealer who also performs, in the usual course of business, a distributor's function. Each license so issued shall be permanently and prominently displayed on the premises or cigarette vending machine covered by the license. Distributors and dealers licensed under this act may buy, sell or have in their possession, only cigarettes which have the insignia provided for in this act on each individual package. The insignia provided for in this act shall be sold to, and affixed by, licensed distributors and licensed dealers only. A distributor's license shall not authorize the holder thereof to make sales of cigarettes at retail in less than carton lots.

**History:** En. Sec. 2, Ch. 289, L. 1947; amd. Sec. 2, Ch. 18, L. 1957.

#### Amendment

The 1957 amendment in the first sentence substituted "the business of distributor or dealer" for "such business" and deleted the words "or continuing to engage therein, after July 1, 1947" which appeared at the end of the sentence; in the second sentence substituted "each distributor or dealer" for "such person"; added the third sentence; in the fourth sentence substituted "or" for "and"; in the seventh sentence substituted "dealer" for "retailer" and deleted the words "or wholesaler's" which appeared between the

words "distributors" and "function"; in the eighth sentence inserted the words "or cigarette vending machine"; in the ninth sentence substituted "only cigarettes which have the insignia" for "only such cigarettes upon which has the stamp or insignia" in the tenth sentence deleted the words "stamps or" which appeared before the word "insignia" and substituted "licensed dealers" for "retailers"; from the eleventh sentence deleted a proviso clause which read "provided, however, before said distributor shall make any such sale at retail, the stamp or insignia shall be affixed to each individual package" and also deleted a former twelfth sentence which read "Each cigarette vending ma-

chine shall be licensed at a particular place of business where the licensee has place of business, provided that only one machine is to be licensed at a particular more than one machine in operation."

**84-5606. The tax.** Subdivision—(1) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to-wit: Five cents (5¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then five cents (5¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

Subdivision—(2) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (1) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as hereby amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, or in said Korean War.

Subdivision—(3) From and after the effective date of this amendatory act of the Thirty-fifth Legislative Assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (1) and (2) of this section 84-5606, as amended by said section 16 of said Initiative Measure No. 54, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

One (1) cent on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by this amendatory act of said Thirty-fifth Legislative Assembly, and the payment of the interest thereon, and the payment of the expenses of administration of this amendatory act.

Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax there-

on. Said insignia shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

**History:** En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957.

### Compiler's Note

This section was amended three times in the 1957 Session. Once by chapter 18, once by chapter 44 and once by chapter 222. Neither chapter 18 nor 222 provided for a specific effective date while chapter 44 was effective February 26, 1957. Chapter 18 was signed by the Governor, February 18, 1957; chapter 44 was signed February 26, 1957; and chapter 222 was signed March 12, 1957. The acts do not seem to be in conflict with one another, hence the Compiler has made a composite section incorporating the changes made by each chapter. For specific changes, see Amendments below.

### Amendments

The amendment by Ch. 18, Laws 1957 in the last paragraph substituted "dealer" for "retailer" in the first sentence; substituted "insignia" for "stamps" in the same sentence; deleted a former second

sentence in that paragraph which read "Said stamps shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe"; substituted "insignia affixed" for "stamp to affix," substituted "insignia" for "stamp" before the words "will be destroyed" and substituted "act" for "law" after the words "provided for in this."

The amendment by Ch. 44, Laws 1957 in the second paragraph of subdivision (2) inserted "under the authority of said Initiative No. 54 as hereby amended"; substituted "residents of Montana" for "residents of this state"; added "or in said Korean War" and added subdivision (3). The amendment did not carry any of the changes made by chapters 18 and 222.

The amendment by Ch. 222, Laws 1957 in subdivision (1) increased the tax from 2¢ to 5¢ and in the last paragraph, carried the same change as made by Ch. 18 in the first sentence; reinstated the second sentence, which had been deleted by Ch. 18; substituted "insignia" for "stamps" in that sentence and substituted "insignia" for "stamp" in the third sentence. This amendment did not carry any of the change made by Ch. 44, Laws 1957.

## INITIATIVE MEASURE NO. 54 AMENDMENTS

Initiative Measure No. 54 (Laws 1951, pps. 781 to 790) was amended by chapter 44 and chapter 45 of the 1957 Session and Session. These acts read as follows:

### Chapter 44, Laws 1957; amd. chapter 13, Laws 1959

An act to amend Initiative Measure No. 54, adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, by amending section 1 thereof, defining terms; by amending section 2 thereof so as to provide for the payment of an honorarium to persons serving on active duty during the Korean War; authorizing issuance of six million dollars (\$6,000,000.00) of limited obligation bonds or so

much thereof as may be necessary to supplement the moneys now in the "War Veterans' Compensation Fund" sufficiently to make the payments provided for in said Initiative No. 54 as hereby amended; by adding thereto a new section to be numbered 14-A, providing for the deposit of moneys from the sale of such additional bonds in said "War Veterans' Compensation Fund"; amending section 16 of said Initiative No. 54, and amending sections 84-5606 and 84-5621, Revised Codes of Montana, 1947, as amended, by providing an additional excise tax upon



the sale of cigarettes in the state of Montana; said moneys to be deposited in the "War Veterans' Compensation Bond Retirement Fund No. 2" for the payment of such additional bonds and interest thereon and creating such fund; making an appropriation of the moneys now remaining in the "War Veterans' Compensation Fund" not needed for the payment of the honorarium to persons who served in World War II and of the funds derived from the sale of said bonds; by adding a section to be numbered 17-A, providing that nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars (\$22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54; providing that said Initiative No. 54 as by this act amended shall be construed as though it had been originally passed with the amendments made by this amendatory act, if such construction does not conflict with express provisions of this amendatory act; providing limits of time within which claims under subdivisions (b), (c), and (d) of section 2 of said Initiative No. 54, as said section is by this amendatory act amended, under section 3 of said Initiative No. 54 as by this amendatory act amended, or under section 5 of said Initiative No. 54 as by this amendatory act amended, may be filed; making incidental amendments of the sections of said Initiative No. 54 in this amendatory act specifically referred to, germane to the general purpose of this amendatory act and designed to facilitate the administration thereof; providing that if any part of this amendatory act shall be held invalid, such invalidity shall not affect the other provisions of this act; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

WHEREAS, the Korean War began before the submission of Initiative No. 54, ADOPTED by the vote of the people of Montana at the regular General Election of November 7, 1950, but too late to permit the inclusion in the provisions of said act of persons in the military service during said Korean War; and

WHEREAS, it was the intent of the people of Montana to recognize by the honorarium provided in said Initiative No. 54 all residents of Montana rendering military service on behalf of said state in the then emergency; and

WHEREAS, said Korean War was a recrudescence of said World War II and properly includable within the provisions of said Initiative No. 54,

Section 1. That section 1 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 1. As used in this law.

(a) The term "World War II" means the period between December 7, 1941, and September 2, 1945, both dates inclusive.

(b) The term "Korean War" means the period between June 25, 1950, and October 16, 1953, both dates inclusive.

(c) The term "Korean Theatre" means the Korean Peninsula and the waters surrounding said Peninsula, the islands of Japan and other territory upon which personnel of the United Nations were based during said Korean War or operating in the presence of the Korean Conflict.

(d) The term "Military Forces" as applied to World War II means the Army, the Navy, the Marine Corps, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, all Air Forces, and all other groups and services in and forming a part of the Armed Services under the control and subject to the discipline of the War Department or the Navy Department of the United States, and engaged in the prosecution of World War II.

(e) The term "Military Forces" as applied to the Korean War means the Army, the Navy, the Marine Corps, the Air Force, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, and all other groups and services forming a part of the Armed Services under the control and subject to the discipline of the Department of Defense of the United States and on active duty during the period of said Korean War. The term "Department of Defense" as herein used means all of the branches of the Armed Services of the United States acting under the unified control of the Department of Defense.

(f) The term "Military Service" means service on active duty by any person in any of the military forces at any time during World War II or during said Korean War.

(g) The term "Person" includes female as well as male.

(h) The term "Serviceman" means a person who is entitled to receive payments under section 2 of this law.

(i) The term "Resident of Montana" means a person who was in military service and who at the time of his or her entry into such military service had his or her home in Montana. A person who, on December 7, 1941, or in the case of the Korean War, on June 25, 1950, was serving on active duty in any of the armed services of the United States and who at the time of his or her then last entry into such service made his or her home in

Montana and who was in the military service at some time in World War II, or during the Korean War, shall be deemed a resident of Montana, unless he or she, after such last entry, and before entry into military service in either such war, had established and was then maintaining a home in some other state; and any such serviceman whose parents or surviving parent then resided in Montana, shall be deemed a resident of Montana.

(j) The term "Continental Limits of the United States" means the area of the 48 states and the District of Columbia, to high water mark on its water boundaries.

Section 2. That section 2 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 2. In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War II, and in the prosecution of said Korean War, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants, and there shall be paid to,

(a) Each resident of Montana who was in military service as a member of any branch of the military forces of the United States at some time during World War II an honorarium, or adjusted compensation, in the sum of ten dollars (\$10.00) for each month and major fraction of a month of such service within the continental limits of the United States, and the sum of fifteen dollars (\$15.00) for each month and major fraction of a month for such service outside the continental limits of the United States:

(b) Each resident of Montana who was in military service at some time during the Korean War, and during part or all of the period of such service was in said Korean Theatre, an honorarium, or adjusted compensation, in the sum of fifteen dollars (\$15.00) for each month and major fraction of a month of such service in said Korean Theatre, and ten dollars (\$10.00) for each month and major fraction of a month of such service outside said Korean Theatre, provided further that any serviceman who, while on active duty in said Korean Theatre during said Korean War, shall have suffered disease or injury from any cause whatsoever, including injury from exposure to weather and/or weather conditions, and in line of duty, and is hospitalized therefore by any of the armed services of the United States he or she shall be deemed, for the purpose of this

amendatory act, to have been in military service in said Korean Theatre as long as he or she shall be or have been continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, and wherever situated, subject to the limitation in this subdivision hereinafter specified; provided further that any serviceman who shall have been taken prisoner by the enemy in said Korean Theatre, and who shall have been classified by any of said armed services under the Department of Defense as a prisoner of war, shall receive the sum of fifteen dollars (\$15.00) for each month and major fraction of a month during which he or she was so held by the enemy as such prisoner; but any such prisoner of war shall be paid not less than three hundred dollars (\$300.00); and provided, finally, that no serviceman shall be paid, under any of the provisions of this subdivision, more than six hundred dollars (\$600.00);

(c) Each resident of Montana who was in military service during said Korean War, but whose military service was wholly outside said Korean Theatre, an honorarium, or adjusted compensation of ten dollars (\$10.00) for each month and major fraction of a month of such service;

(d) The surviving spouse, children, or parents, as the case may be, and as in this amendatory act hereinafter provided, of any Korean serviceman who died in line of duty while in such military service during either World War II or said Korean War, or who shall have died prior to payment under this section from any cause attributable to his military service, in line of duty, as shown by the records of the United States Veterans' Administration, shall be paid the amount to which such deceased serviceman would have been entitled had he received payment of said honorarium, or if such amount is less than five hundred dollars (\$500.00), then such surviving spouse, children or parents, as the case may be, shall be paid the sum of five hundred dollars (\$500.00), and no more;

(e) Provided that there shall be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in either of said Wars, no more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so received or to which he or she may be entitled from another such state or territory; and provided further that no payment shall be made under this law to any person who was dishonorably discharged



from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Section 1. That section 3, chapter 44, Laws of 1957, be, and the same is hereby amended to read as follows:

Section 3. In the case of the death of any such serviceman prior to payment under this law, the amount specified in section 2 of this amendatory act, shall be paid as follows:

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to the child or children who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children, then such payment shall be made to the parents of the deceased, or if one of them shall be deceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

(4) The payments in this paragraph provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person. [As amended by Sec. 1, Ch. 13, Laws 1959.]

[The remainder of Ch. 13, Laws 1959 read as follows:

"Section 2. Nothing in this act shall be deemed to amend or in any way alter the provisions of sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 or 13 of chapter 44, Laws of 1957.

"Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 4. This act shall be in full force and effect from and after its passage and approval." Approved February 4, 1959.]

Section 4. That section 5 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 5. In the case of minors or incompetent persons, claims shall be filed by and payments made to his or her guardian, his or her custodian duly appointed by the Veterans' Administration, or his or her legal fiduciary.

Section 5. That section 12 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 12. For the purpose of providing for the payment of the honorarium, or adjusted compensation, herein pro-

vided for and for paying the expenses of administration of this law, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of twenty-two million dollars (\$22,000,000.00) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner in this law provided; shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax in this law provided for and place the proceeds thereof in the War Veterans' Compensation Bond Retirement Fund, until all bonds issued hereunder, and the interest accruing thereon, shall have been paid; shall draw interest at the rate of not more than four and one-half per cent ( $4\frac{1}{2}\%$ ) per annum, payable semi-annually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and conditions upon which they may be called for payment prior to maturity; whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds; and said board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semi-annually, which coupons shall be executed with facsimile signatures of all the members of said board of examiners, and the signing of such coupons with such facsimile signatures shall be recognized as sufficient execution of such coupons on behalf of the state of Montana. Provided, however, that if the moneys derived from said first issue of twenty-two million dollars (\$22,000,000.00) of bonds as in this section above provided shall be insufficient to pay all claims heretofore filed with and heretofore or hereafter allowed by said board of examiners under the original provisions of said Initiative No. 54 as heretofore amended, and to pay all claims filed and allowed under this amendatory act, together with the expenses of administration



of this amendatory act, there shall be issued and sold under the direction and supervision of the board of examiners of the state of Montana limited obligation bonds of the state of Montana in the further sum of six million dollars (\$6,000,000.00) or in such sum within that amount as may be necessary for such purposes. The issuance of such bonds shall be made in the same manner and such bonds shall be subject to the same limitations, restrictions, and provisions as apply to said original issue of twenty-two million dollars (\$22,000,000.00), except that such bonds shall draw not more than four and one-half per cent (4½%) interest and shall be payable only out of a cigarette tax as hereinafter provided in this amendatory act.

Section 6. That there is hereby added to said Initiative No. 54 a new section to be numbered section 14-A, to read as follows:

Section 14-A. The money arising from the sale of such said additional bonds in the amount of six million dollars (\$6,000,000.00) in this amendatory act above-provided for as may be sold as herein provided shall be deposited in the state treasury to the credit of the special fund created by said Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in said fund, after payment of all claims heretofore filed with and heretofore or hereafter allowed by the board of examiners under the original provisions of said Initiative No. 54, shall, together with such additional funds as may be derived from the sale of bonds under the said issue of six million dollars (\$6,000,000.00) authorized by this amendatory act, be used to pay said honorarium granted by subdivisions (b), (c), and (d) of section 2 hereof, and by section 3 of said Initiative No. 54 as hereby amended, and the expense of administration of this amendatory act. For the purpose of carrying out the provisions of this amendatory act there is hereby appropriated from the War Veterans' Compensation Fund, in addition to the appropriation made by section 14 of said Initiative No. 54 as originally enacted, the moneys now remaining in said fund and not needed for the payment of the honorarium to persons who served in World War II, and the sum of six million dollars (\$6,000,000.00), or so much thereof as may be necessary to pay said honorarium to the persons who served in the military forces in said Korean War.

Section 7. That section 16 of said Initiative No. 54 be, and the same is hereby amended to read as follows:

Section 16. That in addition to the aggregate excise tax upon cigarettes now provided for by section 16 of said Initia-

tive Measure No. 54, there is hereby imposed a tax of one cent (1¢) on each package of cigarettes containing not more than twenty (20) cigarettes, and when a package shall contain more than twenty (20) cigarettes, then one cent (1¢) for each twenty (20) or fraction of twenty (20) cigarettes in such package. Such additional tax shall be collected at the same time and in the same manner as the tax levied and imposed by subdivision (2) of said section 16 of said Initiative Measure No. 54. For the purpose of giving full legal effect to said increase of said excise tax, section 84-5606 of said Title 84 and section 84-5621 of said Title 84 are hereby amended so as to read as follows:

Section 84-5606. [See section as set out above.]

Section 84-5621. [See section 84-5621.]

Section 8. There is hereby added to said Initiative No. 54 a new section to be numbered section 17-A to read as follows:

Section 17-A. Nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars (\$22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54, or of the interest thereon, but the provision made by said Initiative for the payment of said bonds and the interest thereon shall remain inviolate.

Section 9. Except where such construction would conflict with express provisions of this amendatory act, said Initiative No. 54 shall be construed as though the amendments made hereby had formed a part of said Initiative at the time of its adoption on November 7, 1950. Nothing herein contained is to be construed as extending the time of filing claims under said Initiative No. 54 as originally adopted nor as amended by chapter 123 of the Laws of the Thirty-third Session of the Montana Legislative Assembly, nor as authorizing any payments from said War Veterans' Compensation Fund except expenses of administration of said Initiative as hereby amended, of claims for the honorarium filed on or prior to January 1, 1954, and the expenses of administration in connection therewith, and of the payments provided for in subdivisions (b), (c) and (d), of section 2, and in sections 3 and 5, of said Initiative No. 54 as amended.

Section 10. Claims for benefits under the provisions of subdivisions (b), (c) and (d) of section 2 and/or under sections 3 and 5 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of three (3) years from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of three (3) years shall be extended for a period equal

to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Section 11. If any provision contained in this amendatory act shall for any reason be held invalid, such decision shall not invalidate the remaining provisions of this act.

Section 12. All acts or parts of acts in conflict herewith are hereby repealed.

Section 13. This act will take effect and be in full force and effect from and after its passage and approval. Approved February 26, 1957.

#### Chapter 45, Laws 1957; amd. chapter 49, Laws 1959

An act to amend Initiative Measure No. 54 adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, as amended by chapter 123, Session Laws of 1953, relating to section 6 thereof, by providing a new date for applications for payment of the honorarium to be December 31, 1957, repealing all acts and parts of acts in conflict herewith, and containing an effective date.

Section 1. That section 6 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 6. All applications for the payment of the honorarium or adjusted compensation here provided for shall be filed with the board of examiners before the thirty-first day of December, 1959: and the filing of an application with a county

clerk and recorder of any county of this state shall be deemed, for the purpose of this section, to have been filed with said board as of the date of filing with such clerk and recorder. Upon receiving any such application such clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such filing, and shall immediately endorse the fact and time of filing upon such application, over his signature and seal, and immediately transmit such application to the said board of examiners. Any filing with such board or with any such clerk and recorder within the time limited by this section shall be effective to preserve the rights of the applicant though such application as so filed shall be defective, provided defects therein are later corrected under reasonable rules to be adopted by said board.

[The remainder of Ch. 49, Laws 1959 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 26, 1959.]

Section 3. This act shall be in full force and effect upon its passage and approval. Approved February 26, 1957.

#### Submission to Voters

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under the constitution of Montana. *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 915, 916.

**84-5607. Affixing of insignia.** Insignia shall be affixed to packages of cigarettes only by licensed distributors and dealers. Provided, however, the provisions of this act shall not apply to public warehouses acting as agents of manufacturers.

History: En. Sec. 7, Ch. 289, L. 1947; amd. Sec. 4, Ch. 18, L. 1957.

#### Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

**84-5608. Insignia purchased at discount.** Every licensed distributor and dealer will be entitled to purchase said insignia at a discount of eight per cent (8%) of their face value, upon payment therefor. This discount is not applicable to that portion of the tax collected for any veterans' honorarium.

History: En. Sec. 8, Ch. 289, L. 1947; amd. Sec. 5, Ch. 18, L. 1957; amd. Sec. 2, Ch. 222, L. 1957.

#### Compiler's Note

This section was amended twice in the 1957 Session. Once by chapter 18 and



once by chapter 222. Neither law contained a specific effective date. Chapter 18 was signed by the Governor February 18 while chapter 222 was signed March 12. As the acts are not in conflict with each other the Compiler has made a composite section. For specific changes see Amendments below.

#### Amendments

The 1957 amendment by Ch. 18 substituted "dealer will" for "retailer shall"

**84-5609. Use of tax stamping meters.** The board may authorize any manufacturer, distributor or dealer of cigarettes to use a tax stamping meter machine with which to place an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the board. Each individual package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax stamping meter machine and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any distributor or dealer licensed under this act. The board shall supervise and check the operation of such tax stamping meter machines. The operator of such machine, before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall collect from said operator the amount of money proper for said setting, less a discount of ten per cent (10%) on that portion of the tax not being collected for any veterans' honorarium. The county treasurer shall immediately report to the board on forms prescribed by it, the name of the operator and the number of packages for which said meter was set and shall immediately forward to the board the amount collected from said operator.

**History:** En. Sec. 9, Ch. 289, L. 1947; amd. Sec. 6, Ch. 18, L. 1957.

#### Amendment

The 1957 amendment in the first sentence substituted "dealer" for "retailer" and deleted the words "in lieu of said stamps" which appeared at the end of this sentence; in the fifth sentence inserted the words "before using the same"; added the sixth sentence; in the seventh sentence substituted "shall immediately forward to the board the amount collected from said operator" for "the distributor or retailer, using such tax stamping meter machine, within ten (10) days from the first day of the month of the following month, shall remit to the board the amount of the tax due on the packages of cigarettes for which said tax stamping meter machine was set to stamp for the preceding month" and deleted a former last paragraph which

and "insignia" for "stamps" in the first sentence and added the second sentence.

The 1957 amendment by Ch. 222 made the same changes as the amendment by Ch. 18 and also decreased the discount from 10% to 8%.

#### Repealing Clause

Section 3 of Ch. 222, Laws 1957 repealed all acts and parts of acts in conflict therewith.

read "That any distributor or retailer using such tax stamping meter machine shall be required to furnish a surety bond, to be approved by the board, in the sum of five thousand dollars (\$5,000.00) conditioned for the payment of the tax due on packages of cigarettes stamped by said tax stamping meter machines."

#### Separability Clause

Section 7 of Ch. 18, Laws 1957 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

#### Repealing Clause

Section 8 of Ch. 18, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**84-5621. Clerical and field assistants.** The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly



administer the provisions of this law. All moneys collected under the provisions of subdivision (1) of section 84-5606 of the Montana Revised Codes of 1947, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited in the general fund of the state. All taxes levied, imposed and assessed under the provisions of subdivision (2) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a special fund known as the War Veterans' Compensation Bond Retirement Fund, which fund shall be kept segregated from all money in the state treasury and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All moneys derived from such additional tax shall be paid to the state treasurer and credited to a special trust fund to be known as the War Veterans' Compensation Bond Retirement Fund, which shall be kept segregated from all money in the state treasury and shall, while any of the bonds herein authorized or any interest thereon remain unpaid, be available solely for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a special fund to be known as the War Veterans' Compensation Bond Retirement Fund No. 2, which fund shall be kept segregated from all other money in the state treasury and shall, while any of the bonds hereafter issued and sold, in addition to the twenty-two million dollars (\$22,000,000.00) authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

**History:** En. Sec. 21, Ch. 289, L. 1947;  
amd. Sec. 16, Initiative No. 54 (L. 1951,  
p. 781); amd. Sec. 1, Ch. 123, L. 1953;  
amd. Sec. 7, Ch. 44, L. 1957.

#### **Amendment**

The 1957 amendment added the third paragraph.

#### **References**

Cited in *Cottingham v. State Board of Examiners*, — M —, 328 P 2d 907, 909.









# REVISED CODES OF MONTANA

## VOLUME 6 1959 Cumulative Pocket Supplement

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE  
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME  
THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

*Edited by*

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

*Editorial Supervisor*

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana



PLAZA CANTON

ARMATON

ARMATON

COPYRIGHT 1959  
by  
THE ALLEN SMITH COMPANY

THE ALLEN SMITH COMPANY



## NEW LAWS IN VOLUME 6

For index see pocket supplement to Replacement Volume 9

### ENACTED IN 1951

Impounding of water in Clark Fork river, 89-856.  
Simultaneous Death Act, 91-423 to 91-430.  
Water conservation bond fund, 89-116.1, 89-116.2.  
Workmen's compensation second injury fund, 92-709A.  
Yellowstone River Compact, 89-903, 89-904.

### ENACTED IN 1953

Creation of trust for prearranged funeral plans, 86-701 to 86-704.  
Transfer of duties, etc., of the custodian of Civil War and Spanish War records, 82-2506.  
Yellowstone River Compact administration, 89-905 to 89-916.

### ENACTED IN 1955

Application of law relating to who may take under wills, 91-104.1, 91-104.2.

### ENACTED IN 1957

Conveying stored water for irrigation through natural channels, 89-857 to 89-864.  
Drainage districts, additional powers, 89-2821 to 89-2825.  
Sage Creek Basin agreement, 89-3001, 89-3002.  
Standards for manufacture of bakery products, 90-301.1.  
Wells, reports on, 89-3101 to 89-3103.  
Workmen's compensation claimant, requiring physical examination, 92-814.1.

### ENACTED IN 1959

Devise or bequest to inter vivos trust created by testator, 91-321.  
Joint operation of irrigation districts, 89-1209 to 89-1220.  
Occupational Disease Act, 92-1301 to 92-1368.  
Transfer of securities by fiduciary, 86-705, 86-706.

## AMENDMENTS IN VOLUME 6

Bonds for executors and administrators, 91-1723.  
Bread weight requirements, 90-301.  
Decedent's estates,  
    Claims against estate, 91-2702.  
    Determination of heirship, 91-3801, 91-3802.  
    Distribution, 91-3901.  
    Escheated estates, 91-502, 91-510, 91-512, 91-520.  
    Family support, 91-2406.  
    Mortgaging and leasing realty, 91-3108.  
Drainage districts, 89-2501, 89-2702, 89-2704.  
Executors and administrators,  
    Mortgage of property, 91-3102.  
    Sale of property, 91-3001 to 91-3003, 91-3013.  
Grades of apples, 90-201.  
Guardianship of incompetent veterans, 91-4818.  
Guardians of insane and incompetent persons, 91-4704.  
Guardian's power to lease, mortgage, and grant real estate, 91-4911.  
Inheritance by aliens, 91-520, 91-521.  
Inheritance tax, 91-4402, 91-4405, 91-4407, 91-4414, 91-4415, 91-4421, 91-4423, 91-4430.  
Irrigation districts, 89-1311, 89-1705, 89-2122.  
Unemployment Compensation Law, 87-103 to 87-107, 87-109, 87-111 to 87-113, 87-117, 87-126, 87-128, 87-130, 87-133, 87-134, 87-138, 87-145, 87-146, 87-148, 87-149.  
Warehousemen's liens, 88-133.  
Water, appropriation, 89-829.  
Water commissioners, 89-1004.  
Weights and measures, 90-101, 90-125, 90-126, 90-129, 90-131, 90-132, 90-136, 90-137, 90-140, 90-146, 90-147.

AMENDMENTS IN VOLUME 6 (Continued)

Wills,

Foreign wills, 91-1001.

Probate, 91-811.

Who may take under, 91-104.

Workmen's Compensation Act, 92-104, 92-108, 92-116, 92-701 to 92-709A, 92-715, 92-817, 92-819, 92-823, 92-827, 92-902, 92-1003, 92-1005, 92-1101, 92-1103 to 92-1105, 92-1110, 92-1112, 92-1114.

# MONTANA REVISED CODES

---

## **TITLE 85—TRADE-MARKS**

### **CHAPTER 1—TRADE-MARKS**

#### **85-102. (4287) Use of trade-mark—how secured.**

Abandonment of trade-mark or trade-      Television trade-marks. 15 ALR 2d 792.  
name. 3 ALR 2d 1226.

### **CHAPTER 2—FAIR TRADE ACT**

#### **85-202. Permissible agreements in contracts for sale of labeled commodities.**

Application of state "fair trade" law  
to nonsigning reseller as violation of fed-  
eral anti-trust laws. 19 ALR 2d 1139.

#### **85-204. Who may establish minimum resale price.**

State power to regulate price of intoxi-  
cating liquors. 14 ALR 2d 699.



## TITLE 86—TRUSTS AND USES

Chapter 7. Miscellaneous trusts, 86-701 to 86-706.

### CHAPTER 1—TRUSTS AND USES IN RELATION TO REAL PROPERTY

#### 86-101. (6783) What uses and trusts may exist.

Jurisdiction of suit involving trust as affected by location of res, residence of parties to trust, service, and appearance. 15 ALR 2d 610.

Purview of gift, charge, or like, for "college education." 36 ALR 2d 1323.

#### 86-102. (6784) Creation of trusts.

##### Resulting Trust

A trust created by operation of law does not come under the statute of frauds and may be proved by parol evidence. *Campanello v. Mercer*, 124 M 528, 227 P 2d 312, 314.

##### References

Cited or applied in *Opp v. Boggs*, 121 M 131, 193 P 2d 379, 383.

Implication of gift in inter vivos trust instrument. 11 ALR 2d 681.

Purported conveyance or transfer based on consideration, which is ineffective to transfer the property, as subject of constructive trust, based on transferor's duty to complete the transfer. 12 ALR 2d 961.

Enforceability on theory of constructive trust of agreement to purchase property at judicial or tax sale for the joint benefit of the parties to the agreement. 14 ALR 2d 1285.

Rights of parties under oral agreement to buy or bid in land for another. 27 ALR 2d 1285.

#### 86-103. (6785) Transfer to one for money paid by another, etc.

##### Operation and Effect

Where consideration for a transfer of property was paid, and title taken in the name of another a trust is presumed to result in favor of the person advancing the money. *Campanello v. Mercer*, 124 M 528, 227 P 2d 312, 314.

Where the husband already owned a fee simple title and the wife voluntarily made an advancement to him for the express purpose of enabling him to pay off a mortgage it does not give rise to a trust under this section. *Baird v. Baird*, 125 M 122, 232 P 2d 348, 353.

##### Presumption of Gift from Husband to Wife

In an action by an ex-husband to impose a trust on property purchased together with ex-wife during coverture, the ex-husband failed to prove facts to overcome the

presumption of a gift to the ex-wife and the rule in Montana is that a transfer of property from one spouse to the other is presumed to be a gift. (Associate Justices Bottomly and Augstman dissenting.) *Dial v. Dial*, 131 M 310, 310 P 2d 610.

##### Resulting Trust

Evidence supported establishment of a resulting trust where the consideration was paid at the time or before the time that legal title passed to the alleged trustee, in that the funds and the pick-up truck traded-in, used for the initial down payment on a new truck, belonged to the defendant. *Firemen's Ins. Co. of Newark, N. J. v. Show*, 110 F Supp 523, 527.

##### References

Cited or applied in *In re Hunter's Estate*, 125 M 315, 236 P 2d 94, 95.

#### 86-105. (6787) For what purposes express trusts may be created.

Trust as created by deed for park or playground purposes. 15 ALR 2d 988.

it was to be held in trust for her, and the mother then deeded the property to another daughter with the understanding

### CHAPTER 2—TRUSTS IN GENERAL—NATURE AND CREATION

#### 86-210. (7887) Involuntary trust resulting from fraud, etc.

##### Operation and Effect

Where daughter conveyed real property to her mother with the understanding that

that it was to be held in trust for the first daughter, but there was no written trust agreement, a constructive trust would result. *Opp v. Boggs*, 121 M 131, 193 P 2d 379, 383.

#### References

Cited in *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 509.

### CHAPTER 3—TRUSTEE'S OBLIGATIONS—SALE, MORTGAGE OR LEASE OF TRUST PROPERTY

#### 86-301. (7888) Trustee's obligation to good faith.

##### Forfeiture of Option

Where neighboring ranchers began joint venture by each contributing \$1,000 to bind a one year purchase option covering lands and leases, and after forfeiture of option and option payment, continued their joint activities, purchase of all the land and leases by one partner, nine months after forfeiture, should not have been made after \$14,000 price was decided without demanding that other partner produce purchase money or withdraw from venture.

*Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 507.

##### Industrial Accident Board

The industrial accident board is under a legal and moral duty to deal fairly with workmen as beneficiaries and to disclose all matters affecting their interests, either beneficially or otherwise. *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 869.

#### 86-303. (7890) Certain transactions forbidden.

##### Purchase of Mortgage

Trustee did not violate his fiduciary duties in buying mortgage outstanding against trust property to protect trustor, who had entrusted 5% royalty for sale by trustee to raise money needed by trustor and when trustor thereafter elected to permit trustee to retain unsold royalty in satisfaction of mortgage, title to the royalty vested in the trustee. *Iverson v. Rehal*, 132 M 295, 317 P 2d 869, 872, 873.

Where trustee purchased a mortgage against the property to protect the bene-

ficiary and the royalty purchasers, and held it for some 18 months, the effect was to continue the fiduciary relationship. *Iverson v. Rehal*, 132 M 295, 317 P 2d 869, 872, 873.

##### Voidable Transfer

A sale or transfer of trust property to the trustee with full knowledge by the beneficiary at a fair price without influence is voidable only. *Iverson v. Rehal*, 132 M 295, 317 P 2d 869, 872, 873.

#### 86-307. (7894) Trustee guilty of fraud, when.

##### References

Cited or applied in *Opp v. Boggs*, 121 M 131, 193 P 2d 379, 385.

#### 86-310. (7897) Measure of liability for breach of trust.

##### Joint Option to Purchase

Neighboring ranchers signed a writing, agreeing to become equal partners in purchase of adjoining grazing leases and ranch lands. Each contributed \$1,000 to bind a one year purchase option covering the lands and leases. The option and option payment was forfeited but they continued their joint activities. Nine months after forfeiture one partner purchased all for himself. A constructive trust was

raised which purchaser could not revoke. He was required to convey an undivided one-half interest in the lands and leases to other partner subject to down-to-date accounting and reimbursement in net amount of purchase price found to be due from plaintiff to purchaser after accounting was completed from date of original agreement. *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 511.

#### 86-313. (7900) Third person—when involuntary trustee.

##### Forfeiture of Option

Neighboring ranchers signed a writing, agreeing to become equal partners in the purchase of adjoining grazing leases and ranch lands. Each contributed \$1,000 to

bind a one year purchase option covering the lands and leases. They forfeited the option and option payment but continued their joint activities. Nine months after forfeiture one partner purchased all for

himself, taking title jointly with his wife and they in turn deed a portion to their son. The wife and son, as donees, were controlled by the donor's actions. *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 506.

### Revocation of Trust

Once there is acceptance, actual or presumed, a trust may be revoked only by agreement or by the courts. *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 510.

## 86-323. Order—confirmation—conveyances—proceeds.

Conveyance, transfer, or encumbrance of trustee upon direction of members. 15 ALR 2d 1451.

## CHAPTER 5—TRUSTS FOR BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS AND RIGHTS OF TRUSTEES

### 86-501. (7908) Trustees must obey declaration of trust.

#### Exchange of Trust Property

Courts hold that where the trust agreement gives the trustee authority to sell and dispose of property as here, he may exchange it. Where all those interested

in the trust property as beneficiaries consent thereto there is no reason why a trustee may not exchange trust property for other property. *Gray v. Corcoran*, 127 M 572, 269 P 2d 1091, 1094.

### 86-509. (7916) Discretionary powers.

#### Probate Court

Probate court has control of discretionary powers vested in a trustee, if not reasonably exercised. *Attix v. Robinson*, 155 F Supp 592, 598.

Trust provisions for payment, in trustee's discretion or for a designated purpose, of part or all of the principal to a beneficiary. 2 ALR 2d 1383.

### 86-510. (7917) Indemnification of trustee.

#### References

Cited in *Gray v. Corcoran*, 127 M 572, 269 P 2d 1091, 1094.

Right of trustee to withhold trust payment from beneficiary to obtain payment of personal debt of latter to him. 8 ALR 2d 209.

### 86-511. (7918) Compensation of trustee.

Costs and other expenses incurred by trustee whose appointment was improper

as chargeable against estate. 4 ALR 2d 190.

## CHAPTER 6—EXTINGUISHMENT, REVOCATION AND VACATION OF TRUSTS—SUCCESSION

### 86-601. (7920) Trust—how extinguished.

#### References

Cited in *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 510.

### 86-602. (7921) Not revocable.

#### Involuntary Trust

An involuntary trust may be revoked only by agreement or by the courts. *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 510.

#### References

Cited in *In re Kohr's Estate*, 122 M 145, 199 P 2d 856, 863, 5 ALR 2d 1046.

### 86-603. (7922) Trustee's office—how vacated.

#### Term of Office

Unless discharged, a trustee is in office

till he dies. *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 510.

### 86-604. (7923) Trustee—how discharged.

#### Termination of Trust

Neither malfeasance nor wrongful conversion will lapse or terminate a trust

nor discharge the trustee. *Bradbury v. Nagelhus*, 132 M 417, 319 P 2d 503, 510.



**86-605. (7924) Removal by district court.****References**

Cited in *Bradbury v. Nagelhus*, 132 M  
417, 319 P 2d 503, 510.

## CHAPTER 7—MISCELLANEOUS TRUSTS

- Section 86-701. Contract for prearranged funeral plan—trust created.  
 86-702. Deposit of money in trust—how deposited.  
 86-703. Report of institution holding deposited money.  
 86-704. Penalty.  
 86-705. Registration or transfer of stock, bonds, or securities by any fiduciary  
       —corporation or transfer agent not bound to determine whether  
       fiduciary is breaching obligation.  
 86-706. "Fiduciary" defined.

**86-701. Contract for prearranged funeral plan—trust created.** In all cases when, prior to his death, a person, or some one in his behalf, makes a contract for the final disposition of his body, under which contract, pursuant to a prearranged funeral plan, personal property will be delivered upon his death or the professional services of a funeral director or embalmer will then be furnished, all money paid under such contract shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or, by mutual consent of both parties to the contract, said money is refunded to the proper party. Accruals of interest upon this money are subject to this same trust.

**History:** En. Sec. 1, Ch. 232, L. 1953.

**Title of Act**

An act relating to the sale of personal property or services under prearranged fu-

neral plans; requiring the proceeds thereof to be held in trust for the purposes intended; providing penalties for violations, and fixing the effective date of this act.

**86-702. Deposit of money in trust—how deposited.** Within thirty (30) days after receipt the party to the contract holding said money in trust, according to section 1 [86-701], shall deposit said money in a banking institution, or invest said money in the stock of a savings or building and loan association, organized under the laws of the state of Montana or of the United States of America and having its principal place of business in the state of Montana, the deposits of which banking institution or the stock liability of which savings or building and loan association are insured by an instrumentality of the federal government. Said deposits or investments shall be and constitute a trust fund for the benefit of the person who has contracted for such property and services upon his death. Such money shall be deposited in a separate account in the name of the depositor as trustee for the person who has contracted for such property and services upon his death.

**History:** En. Sec. 2, Ch. 232, L. 1953.

**86-703. Report of institution holding deposited money.** Any banking institution, or savings or building and loan association, receiving money in trust under the provisions of section 2 [86-702] of this act, shall report to the superintendent of banks of the state of Montana, on or before the first day of February of each year, all amounts received and held in trust. This report shall show the name and address of each trustee and

cestui que trust, the principal amount remaining and the interest or dividends paid on each such account.

**History:** En. Sec. 3, Ch. 232, L. 1953.

**86-704. Penalty.** Any person wilfully violating the provisions of section 2 [86-702] of this act shall be guilty of a misdemeanor and upon conviction therefor shall be punished as provided in section 94-116, Revised Codes of Montana, 1947.

**History:** En. Sec. 4, Ch. 232, L. 1953. sage and approval. Approved March 6, 1953.

**Effective Date**

Section 5 of Ch. 232 provided the act should be in effect from and after its pas-

**86-705. Registration or transfer of stock, bonds, or securities by any fiduciary—corporation or transfer agent not bound to determine whether fiduciary is breaching obligation.** If a fiduciary or the nominee of a fiduciary in whose name are registered or to be registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, or of any trust, applies for the registration or transfer of the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary or nominee is committing a breach of his obligation as fiduciary or nominee in making such registration or transfer, or to see to the performance of the fiduciary obligation, and is liable for such registration or transfer only where such registration or transfer is made with actual knowledge that such fiduciary or nominee is committing a breach of trust in requesting such registration or transfer, or with knowledge of such facts that its or their participation in such registration or transfer amounts to bad faith.

**History:** En. Sec. 1, Ch. 136, L. 1959. or their nominees; to provide that the

**Title of Act**

An act to provide for registration or transfer of securities to or by fiduciaries or their nominees; to provide that the transferring agent is not bound to inquire whether the fiduciary or nominee is committing a breach of the fiduciary relationship; and containing a repealing clause.

**86-706. "Fiduciary" defined.** "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, nominee, or any other person acting in a fiduciary capacity for any person, trust or estate.

**History:** En. Sec. 2, Ch. 136, L. 1959.

**Repealing Clause**

Section 3 of Ch. 136, Laws 1959 repealed all acts or parts of acts in conflict therewith.

## TITLE 87—UNEMPLOYMENT COMPENSATION

Chapter 1. The unemployment compensation law, 87-103 to 87-107, 87-109, 87-111 to 87-113, 87-117, 87-126, 87-128, 87-130, 87-133, 87-134, 87-138, 87-145, 87-146, 87-148, 87-149.

### CHAPTER 1—THE UNEMPLOYMENT COMPENSATION LAW

- Section 87-103. Benefits.  
87-104. Duration of benefits.  
87-105. Benefit eligibility conditions.  
87-106. Disqualification for benefits.  
87-107. Claims for benefits.  
87-109. Contributions.  
87-111. Unemployment compensation fund.  
87-112. Accounts and deposits.  
87-113. Withdrawals.  
87-117. Unemployment compensation commission—organization.  
87-126. Subpoenas.  
87-128. State-federal cooperation.  
87-130. Acquisition of property, etc.  
87-133. Unemployment compensation administration fund—special fund.  
87-134. Reimbursement of fund.  
87-138. Refunds.  
87-145. Penalties—falsity or wilful nondisclosure—violations by employer or agent—violation of act by regulations—wrongfully collecting benefits.  
87-146. Representation in court.  
87-148. Definitions.  
87-149. Definitions—continued.

**87-103. Benefits.** (a) Payment of benefits. Thirty (30) months after the date when contributions first accrue under this act from the employer, benefits shall become payable from the fund to any individual, who thereafter is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the railroad unemployment insurance act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act with respect to any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable on the basis of such wages under any provisions of this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the commission, in accordance with such rules and regulations as the commission may prescribe.

(b) Weekly benefit amount. Except as provided in [sub]section (c), an insured worker's weekly benefit amount shall be the amount in column B of the benefit schedule of this subsection on the line on which in column A there appears his total wages paid for insured work in that quarter of his base period in which his wages were highest: (designated in the benefit schedule as "High-quarter Wages").



## Benefit Schedule

Weekly benefit amount figures from weighted schedule of high-quarter wages and qualifying wages computed as one and one-half times high-quarter wages and maximum potential benefits in benefit year.

High-Quarter Wages (Column A)	Weekly Benefit Amount (Column B)	Minimum Qualifying Wages (Column C)	Maximum Total Benefits (at 22 weeks) (Column D)
\$170.00-189.99	\$10.00	\$255.00	\$220.00
190.00-209.99	11.00	285.00	242.00
210.00-234.99	12.00	315.00	264.00
235.00-259.99	13.00	352.50	286.00
260.00-284.99	14.00	390.00	308.00
285.00-309.99	15.00	427.50	330.00
310.00-334.99	16.00	465.00	352.00
335.00-359.99	17.00	502.50	374.00
360.00-384.99	18.00	540.00	396.00
385.00-409.99	19.00	577.50	418.00
410.00-434.99	20.00	615.00	440.00
435.00-459.99	21.00	652.50	462.00
460.00-484.99	22.00	690.00	484.00
485.00-509.99	23.00	727.50	506.00
510.00-534.99	24.00	765.00	528.00
535.00-559.99	25.00	802.50	550.00
560.00-584.99	26.00	840.00	572.00
585.00-609.99	27.00	877.50	594.00
610.00-634.99	28.00	915.00	616.00
635.00-659.99	29.00	952.50	638.00
660.00-684.99	30.00	990.00	660.00
685.00-709.99	31.00	1,027.50	682.00
710.00 or more	32.00	1,065.00	704.00

Such benefit shall be not more than thirty-two dollars (\$32.00) per week nor less than ten dollars (\$10.00) per week.

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in his base period totaling not less than the amount in column C of the benefit schedule in subsection (b) on the line on which in column B there appears his weekly benefit amount; provided, that if any individual during his base period has not been paid such an amount but has been paid wages totaling not less than an amount appearing in column C, he can qualify as an insured worker and his benefit amount shall be the amount appearing in column B opposite the minimum qualifying wage which he has received.

(d) Wage record. The commission shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(e) Benefits. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse, or if

there be no surviving spouse, then to the surviving children, or if there be no surviving children, then to the next of kin, without the necessity of any recipient obtaining letters testamentary or of administration.

**History:** En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957.

#### Compiler's Notes

The railroad unemployment insurance act referred to in this section is Ch. 680, 52 Stat. 1094 and the section containing definitions is sec. 1 compiled in the United States Code as Tit. 45, sec. 351.

Section 8 of Ch. 191, Laws 1953 provided the act should be in effect from and after the date of its passage and approval (March 4, 1953) and that it should apply to the benefit payments under this section as of April 1, 1953.

Section 6 of Ch. 238, Laws 1955 read "This act shall be in full force and effect from and after April 1, 1955, and section 1 shall apply to all benefit years beginning after April 1, 1955, and the insured status of all claimants who have a benefit year current on or after April 1, 1955, shall be redetermined and benefits shall be paid in accordance with this provision provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision."

#### Amendments

The 1949 amendment amended subsection (b) by raising the maximum payment from eighteen to twenty dollars per week.

The 1953 amendment completely rewrote subsection (b). Formerly it read: "Weekly Benefit Amount for Total Unemployment. Each eligible individual, who is totally

unemployed (as defined in this act), in any week, shall be paid with respect to such week, benefits at the rate of four and one-half per centum ( $4\frac{1}{2}\%$ ) of his total wages in employment for employers in the quarter of his base period wherein his earnings were highest, if a multiple of a dollar, or computed to the next highest multiple of a dollar, but not more than twenty dollars (\$20.00) per week, nor less than seven dollars (\$7.00) per week"; added a new subsection (c) and changed former subsection (c) to (d).

The 1955 amendment raised all of the figures in column B by \$3.00; raised all of the figures in column D by \$60; increased the maximum and minimum weekly benefit from \$23 and \$7 to \$26 and \$10 respectively, and added subdivision (e).

The 1957 amendment in the Benefit Schedule increased the maximum weeks for benefits from 20 to 22, increased the maximum weekly benefit from \$26 to \$32 and made numerous changes in the columns; in subsec. (c) deleted the words "and such wages must have been paid in at least two quarters of his base period:" which appeared before the word "provided" and also deleted "on a line not more than three lines above" which appeared after "column C."

Vested right of applicant for unemployment compensation in mode and manner of computing benefits in effect at time of his discharge or loss of employment. 20 ALR 2d 963.

What constitutes a "part time worker" school student excluded from coverage of unemployment compensation or insurance act. 31 ALR 2d 495.

**87-104. Duration of benefits.** The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed twenty-two (22) times his weekly benefit amount.

**History:** En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957.

#### Amendments

The 1949 amendment substituted "eighteen" for "sixteen."

The 1953 amendment substituted "twenty (20)" for "eighteen (18)."

The 1957 amendment substituted "twenty-two (22)" for "twenty (20)."

#### Separability of Provisions

Section 2 of Ch. 178, L. 1949 read: "If any clause, sentence, section, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

**Repealing Clauses**

Section 3 of Ch. 178, Laws 1949 and Sec. 4 of Ch. 140, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 4 of Ch. 178, L. 1949 read: "This act shall be in full force and effect from and after the date of its passage and approval and shall apply as to benefit payments under Section 1 of this act as of March 31, 1949." Approved March 3, 1949.

**Effective Date and Application**

Section 5 of Ch. 140, Laws 1957 read "This act shall be in full force and effect from and after April 1, 1957, and section 1 shall apply to all benefit years beginning after April 1, 1957, and the insured status of all claimants who have a benefit year current on or after April 1, 1957, shall be redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision."

**87-105. Benefit eligibility conditions.** An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the commission finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe, except that the commission may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of section 87-107 (a).

(c) He is able to work and is available for work and is seeking work, provided, however, that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability.

**History:** En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957.

**Amendments**

The 1953 amendment deleted subsection (e) which read: "He has within the base period earned wages for employment by employers equal to thirty (30) times his weekly benefit amount."

The 1955 amendment in the first sentence of subdivision (d) substituted "one (1) week" for "two (2) weeks" and added the second sentence in that subdivision.

The 1957 amendment substituted the words "for any week of total unemployment within his benefit year;" for the words "with respect to any week" in the first paragraph and deleted a former subd. (d) which read "(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period

of one (1) week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits, in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year, but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week shall be counted as a week of total unemployment for the purposes of this subsection:

"(1) If the benefits have been paid with respect thereto;

"(2) Unless the individual was eligible for benefits with respect thereto;

"(3) Unless it occurs within the benefit year of the claimant;

"(4) Unless it occurs after benefits first could become payable to any individual under this act."

Outside pieceworkers as within Unemployment Compensation Act. 1 ALR 2d 555.



Unemployment compensation benefits where, during the base year, employee worked in different states for same employer. 9 ALR 2d 646.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 ALR 2d 369.

Seasonal employees as entitled to unemployment compensation. 24 ALR 2d 1400.

Severance payments as affecting right to unemployment compensation. 25 ALR 2d 1070.

**87-106. Disqualification for benefits.** An individual shall be disqualified for benefits—

(a) If he has left work, without good cause, for a period of not less than one (1) or more than four (4) weeks, as determined by the commission according to the circumstances in each case. No benefit payments or amounts thereafter paid such individual shall ever be charged under section 87-109 against the employer (whose employment the individual left) on account of that particular employment, unless and until the commission shall determine (upon hearing and after at least ten (10) days' written notice thereof to said employer) that the individual left work for good cause based solely upon objectionable conditions or terms of the employment and attributable entirely to the employer.

(b) If he has been discharged for misconduct connected with his work, for a period of not less than one (1) nor more than four (4) weeks as determined by the commission in each case according to the seriousness of the misconduct. No benefit payments or amounts thereafter paid such individual shall ever be charged under section 87-109 against the employer (from whose employment the individual was discharged for misconduct as above provided) on account of that particular employment, unless and until the commission shall determine (upon hearing and after at least ten (10) days' written notice thereof to the said employer) that the individual was not guilty of misconduct as above provided, or that his discharge was not for that reason.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the commission or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the week in which such failure occurred and for not less than the one (1) nor more than the four (4) weeks which immediately follow such week as determined by the commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If position offered is vacant due directly to a strike, lock-out, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the commission, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for total disability under the workmen's compensation law of this, or, any state or under a similar law of the United States;

(3) Benefits under the railroad unemployment insurance act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

(f) During the school term or customary vacation periods within the school term, if claimant has left his most recent work for the purpose of attending an established educational institution, or if claimant is a student regularly attending an established educational institution.

(g) For any week wherein claimant leaves her most recent work to be married. Such disqualification shall continue until such time as said claimant shall have obtained bona fide employment after such marriage. No benefit payments or amounts thereafter paid such claimant shall ever be charged under section 87-109 against employer whose employment the claimant left to be married.

(h) Where retired and entitled to receive retirement compensation paid in whole or in part from funds furnished by an employing unit, such disqualification to be applied as follows: all wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under sections 87-103 or 87-105, and no benefit payments or amounts thereafter paid such individual shall ever be charged under section 87-109 against any employing unit from whose employment the individual is retired, on account of that particular employment, unless and until the commission shall determine (upon hearing had after at least ten (10) days' written notice thereof to said employer) that the individual was not retired by the employer acting in good faith. This disqualification does not extend to the receipt of old age benefits under the federal social security act, as amended, or benefits under the federal old age and survivors' insurance act, or similar payments under any act of congress or state law.

(i) For any week wherein claimant leaves her most recent work during pregnancy, and due to such pregnancy. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, for any week wherein claimant leaves her most recent employment following childbirth, a claimant within the first two (2) months following such childbirth, to establish eligibility, must present evidence of her physical ability to work at such employment. In either of the cases set forth hereinbefore, such evidence of eligibility must be in the form of a certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment.

**History:** En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957.

#### Amendments

The 1953 amendment in subsection (a) deleted the words "without good cause, if so found by the commission" which appeared after the word "voluntarily" in the first sentence and added the second sentence; in subsection (b) substituted the words "or affecting his employment" for "if so found by the commission" in the first sentence and added the second sentence; in subsection (c) substituted "If he failed" for "If the commission finds that he has failed," deleted the word "suitable" which appeared before the word "work" in the first sentence and inserted the phrase "offered to him which he is

physically able and mentally qualified to perform"; deleted former subdivision (3) of subsection (e) which read: "Old age benefit payments under Title II of the social security act, as amended, or benefits under the federal old age and survivors' insurance act, or similar payments under any act of congress or state law" and added subsections (h), (i) and (j).

The 1955 amendment in subd. (a) inserted the words "without good cause attributable to the employment"; in subd. (e)(2) deleted the words "temporary or" which appeared before the words "total disability"; in subd. (g) substituted the second and third sentences for a sentence which read "Such disqualification shall continue until such time as subsequently to such week additional wage credits in employment for employers shall have been earned so as to be eligible for benefits



under section 87-105"; numerous changes were made in subds. (h) and (i), before 1955 amendment they read "(h) Where retired and receiving retirement compensation from benefits chargeable against the employer from whose employment he was retired, all wages earned by such individual in employment from which he has been regularly retired shall not be considered or included in determining his wage credits or weekly benefit amount or aggregate earnings under section 87-103, as amended, and 87-105 and no benefit payments or amounts thereafter paid such individual shall ever be charged under section 87-109 against the employer (from whose employment the individual was regularly retired) on account of that particular employment, unless and until the commission shall determine (upon hearing had after at least ten (10) days written notice thereof to said employer) that the individual was not regularly retired by the employer acting in good faith. (i) For any week wherein claimant leaves her most recent work to change her place of residence in order to remain with her husband or family. Such disqualification shall continue until such time as subsequently to such week additional wage credits shall have been earned so as to be eligible for benefits under section 87-105."

The 1957 amendment in the first sentence of subd. (a) deleted the word "voluntarily" which appeared after the word "work," deleted the words "attributable to the employment" which appeared after the word "cause," substituted "four (4) weeks" for "five (5) weeks" and deleted the words "(in addition to and immediately following the waiting period)" which appeared after the words "four (4) weeks"; in the second sentence deleted the word "voluntarily" both times it appeared after the word "individual"; in subd. (b) in the first sentence deleted the words "or affecting his employment" which appeared after the word "work," substituted "four (4) weeks" for "nine (9) weeks" and deleted the words "(in addition to and immediately following the waiting period)" which appeared after the

words "four (4) weeks"; in subd. (c) in the first sentence inserted the words "and suitable" and "suitable," in the second sentence substituted "four (4) weeks" for "five (5) weeks" and deleted the words "(in addition to the waiting period)" which appeared between the words "week" and "as"; in subd. (d)(2) in the provided further clause substituted "wherein the labor dispute occurs" for "of Montana"; in subd. (e)(3) added the second sentence; in subd. (h) inserted the words "such disqualification to be applied as follows:" deleted former subd. (i) which read "(i) For any week wherein claimant leaves her most recent work to change her place of residence in order to remain with her husband or children. Such disqualification shall continue until such time as said claimant shall have obtained bona fide employment in her new place of residence. No benefit payments or amounts thereafter paid shall ever be charged under section 87-109 against the employer whose employment the claimant left in order to remain with her husband or children" and relettered former subd. (j) as present subd. (i).

Right of unemployment compensation for period when plant was shut down for vacations. 8 ALR 2d 433.

Unemployment compensation as affected by employee's or employer's removal from place of employment. 13 ALR 2d 874.

Leaving employment, or unavailability for particular job or duties, because of sickness or disability, as affecting right to unemployment compensation. 14 ALR 2d 1308.

Construction and application of provision of unemployment compensation acts regarding disqualification for benefits because of labor disputes or strikes. 28 ALR 2d 287.

Right to unemployment compensation as affected by vacation or holiday or payment in lieu thereof. 30 ALR 2d 266.

Right to unemployment compensation of retired employee receiving pension or the like. 32 ALR 2d 901.

**87-107. Claims for benefits.** (a) Filing. Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him.

(b) Initial determination. A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either deter-

mine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal which shall make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 87-106 (d), the deputy shall promptly transmit his full finding of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection which shall be deemed the decision of the deputy. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period under dispute prior to the final decision of the commission, shall be paid only after such decision. Provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten (10) days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal tribunals. To hear and decide disputed claims, the commission shall appoint such impartial appeal tribunals as are necessary for the proper administration of this act, consisting in each case of either a salaried examiner selected in accordance with section 87-123, or a body consisting of three (3) members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers, and the other of whom shall be a representative of employees; each of the latter two (2) members shall serve at the pleasure of the commission and be paid a fee of not more than ten dollars (\$10.00) per day of active service on such tribunal plus necessary expense. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission

may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) Commission review. The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the commission shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The commission shall promptly notify the interested parties of its findings and decision.

**History:** En. Sec. 6(a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957.

**Amendment**

The 1957 amendment inserted the words "under dispute" in the fifth sentence of subd. (b).

**87-108. Procedure and appeals.**

Exhaustion of administrative remedies respect to unemployment compensation. 14 as prerequisite to declaratory relief in ALR 2d 838.

**87-109. Contributions.** (a) Payment. (1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages as defined in section 87-149 (c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half ( $\frac{1}{2}$ ) cent or more, in which case it shall be increased to one (1) cent.

(b) Rate of contribution. (1) Each employer shall pay contributions equal to the following percentages of wages, as defined in section 87-149 (c) paid by him with respect to employment:

(A) One and eight-tenths (1.8) per centum with respect to employment during the calendar year 1937;

(B) Two and seven-tenths (2.7) per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941, and for each calendar year thereafter, except as herein provided in subsection (c) of this section.

(c) Experience rating. The commission shall for the calendar year 1947, and for each calendar year thereafter, classify employers in accordance with their actual contribution and unemployment experience and shall determine for each employer the rate of contribution which shall



apply to him throughout the calendar year in order to reflect said experience and classification.

The commission shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the commission shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual net percentage declines in taxable payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) chargebacks to the individual employer account upon the last employer basis. The computation date is hereby fixed as of the close of business on June 30th of the preceding calendar year.

The rates for the calendar year 1953 and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equalling approximately one and two-tenths (1.2) per centum of the total of all such payrolls.

The commission shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be two and seven-tenths (2.7) per centum unless and until there have been five (5) years prior to the computation date throughout which the employer has paid contributions at the rate of two and seven-tenths (2.7) per centum.

(2) The classified contribution rates for the calendar year 1947, and thereafter, except as hereinafter provided, shall be: one (1.0) per centum, one and one-half (1.5) per centum, two (2.0) per centum, two and one-half (2.5) per centum, and two and seven-tenths (2.7) per centum. The classified contribution rate for the calendar year 1953, and thereafter, except as hereinafter provided, shall be: five-tenths (.5) of one per centum, seven-tenths (.7) of one per centum, nine-tenths (.9) of one per centum, one and one-tenth (1.1) per centum, one and three-tenths (1.3) per centum, one and five-tenths (1.5) per centum, one and seven-tenths (1.7) per centum, one and nine-tenths (1.9) per centum, two and one-tenth (2.1) per centum, two and three-tenths (2.3) per centum, two and five-tenths (2.5) per centum, and two and seven-tenths (2.7) per centum.

(3) No employer shall be assigned a classified contribution rate higher than the second classified rate above the rate which was assigned to him for the last preceding calendar year except as hereinafter provided.

(4) No employer's rate shall be fixed below two and seven-tenths (2.7) per centum whose benefit payments charged as most recent employer have, in the last three (3) years preceding the computation date, exceeded the amount of his contributions for those years, provided that for the calendar year 1957 and thereafter, any employer may, for the purpose of avoiding the provisions of this subsection, have the option of making a voluntary contribution to the unemployment compensation fund to cancel the amount by which the benefit payments charged to him under section 87-109 (c) during the last three (3) completed fiscal years exceed his contributions

for the same three (3) years. Such voluntary contribution shall be applied first to cancel the amount by which benefits exceed contributions in the earliest of the three (3) years preceding the computation date, any remaining to cancel the excess in the second earliest year preceding the computation date, and any further remaining to cancel the excess in the most recent year preceding the computation date. Whenever the benefit payments charged to an eligible employer in the last three (3) fiscal years exceed his contributions for the same period, the commission shall notify him of the amount of such excess and the rate which would be applicable to him for the ensuing calendar year, if he exercises the option. Such employer must exercise the option of making the voluntary contribution allowed by this section within thirty (30) days after receipt of such notice; otherwise his rate for the ensuing calendar year shall be fixed at two and seven-tenths (2.7) per centum.

(5) Rates as fixed by the commission shall stand and be in effect unless and until the cash reserves in the unemployment compensation trust fund at any time in the future fall below twenty-eight million dollars (\$28,000,000.00), then the contribution rate of all employers subject to this act shall immediately return to a uniform rate of two and seven-tenths (2.7) per centum, and shall continue at the two and seven-tenths (2.7) per centum rate until cash reserves in the unemployment compensation trust fund exceed thirty-two million dollars (\$32,000,000.00).

(6) The commission shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, benefit experience and ratings to the successor employing unit or units.

(7) The commission shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the commission for a redetermination or hearing thereon within thirty (30) days after receipt of such notice. The provisions of section 87-107 applicable to appeals under claims procedure shall apply with like purpose and effect, and be applicable to hearings and request for redeterminations of classifications and rates of contribution filed by employers hereunder.

(8) "Annual taxable payroll" means the total of the four (4) quarters of taxable payrolls of an employer preceding the computation date as fixed herein.

(d) Wages in excess of three thousand dollars (\$3,000.00). Commencing January 1, 1941, the provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand dollars (\$3,000.00) by an employer to an employee with respect to employment during any calendar year.

**History:** En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957.

#### **Amendments**

The 1953 amendment made numerous changes in this section. For section prior to amendment see parent volume.

The 1955 amendment reorganized the subsection lettering.

The 1957 amendment in subd. (c), third paragraph, substituted "three (3) years prior to computation date" for "three (3) preceding calendar years"; in subd. (c) (1) substituted "five (5) years prior to the computation date" for "five calendar years"; in subd. (c)(4) deleted the word "average" which appeared twice, before the word "benefit" and before the word "amount," substituted "three (3) years preceding the computation date" for "three (3) preceding calendar years" and added all that portion of this subsection beginning with the proviso clause, and in subd. (c)(5) increased the minimum and maximum reserves from \$18,000,000.00 and \$22,000,000.00 to \$28,000,000.00 and \$32,000,000.00.

#### Separability Clause

Section 6 of Ch. 191, Laws 1953 read: "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

#### Repealing Clause

Section 7 of Ch. 191, Laws 1953 repealed all acts or parts of acts in conflict therewith.

### 87-110. Period, election and termination of employer's coverage.

Constitutionality, construction and application of provision of Unemployment Compensation Act subjecting to its provisions

#### Effective Date

Section 8 of Ch. 191, Laws 1953 provided the act should be in effect from and after the date of its passage and approval and should apply to the benefit payments under section 1 [87-103] of this act as of April 1, 1953. Approved March 4, 1953.

#### Construction

This statute lends itself to the specific subject of experience ratings, while section 87-138 is general in scope, hence where an employer did not avail himself of the right to file a written request for a re-determination of classification within 30 days after receipt of such notice, such notice was final and the employer could not then make application for an adjustment under section 87-138. Where one statute deals with a subject in general and comprehensive terms and another in a more minute and definite way, the two should be read together if possible but to the extent of any repugnancy between them the special will prevail over the general statute. *Wymont Tractor & Equipment Co. v. Unemployment Compensation Comm.*, 128 M 501, 278 P 2d 208, 210.

Unemployment compensation: right of successor in business to experience or rating of predecessor for purpose of fixing rate of contributions. 22 ALR 2d 673.

**87-111. Unemployment compensation fund.** Establishment and control. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this act. This fund shall consist of (1) all contributions collected under this act, inclusive of voluntary contributions as provided in section 87-109 (c) (4); (2) interest earned upon any moneys in the fund; (3) any property or securities acquired through the use of moneys belonging to the fund; (4) all earnings of such property or securities; and (5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended. All moneys in the fund shall be mingled and undivided.

**History:** En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957.

#### Amendment

The 1957 amendment inserted the words "inclusive of voluntary contributions as provided in section 87-109 (c) (4)" in (1) of the second sentence and added (5).

**87-112. Accounts and deposits.** The state treasurer shall be ex officio the treasurer and custodian of the fund who shall administer such fund in



accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three (3) separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to sections 87-135 to 87-139 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund.

**History:** En. Subd. (b), Sec. 9, Ch. 137,  
L. 1937; amd. Sec. 5, Ch. 171, L. 1957.

**Amendment**

The 1957 amendment inserted the words  
"for the payment of benefits" in the sixth  
sentence.

**87-113. Withdrawals.** (a) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, may also be withdrawn for the payment of expenses for the administration of this act and of public employment offices, as provided by this act. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such

sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in section 87-112.

(b) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this act pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be expended to a period ending not more than two (2) years after the date of the enactment of the appropriation law, and (C) limits the amount which may be used during any twelve (12) month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (1) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve (12) month period and the four (4) preceding twelve (12) month periods, exceeds (2) the aggregate of the amounts used pursuant to this subsection and charged against the amounts credited to the account of this state during any of such five (5) twelve (12) month periods. For the purposes of this subsection, amounts used during any such twelve (12) month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount used for administration during any such twelve (12) month period may be charged against any amount credited during such a twelve (12) month period earlier than the fourth preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this subsection shall be deposited in the unemployment compensation administration fund, but until expended, shall remain a part of the unemployment compensation fund. The commission shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(c) All warrants issued by the treasurer for payment pursuant to this section shall bear the signature of the treasurer and the counter signature of a member of the commission or its duly authorized agent for that purpose.

**History:** En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957.

#### **Amendment**

The 1957 amendment divided this section into subdivisions (a), (b) and (c); in

subd. (a) added the exception clause to the first sentence; added new material for subd. (b) and in subd. (c) which was formerly the fifth sentence of subd. (a) substituted "pursuant to this section" for "of benefits and refunds."

**87-117. Unemployment compensation commission—organization.** There is hereby created a commission to be known as the Unemployment Compensation Commission of Montana. The commission shall consist of three (3) members who shall be appointed by the governor by and with the advice and consent of the senate. Two (2) of the members of the commission shall be from different political parties and shall serve for terms of four (4) years, provided, however, that one (1) of those first appointed after this act takes effect shall serve for a term of two (2) years. They shall serve on a per diem basis and shall be paid at the rate of ten dollars (\$10.00) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one (1) year for each of said two (2) members shall not exceed the sum of five hundred dollars (\$500.00). The third member of the commission, who shall be designated as chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. During his term of membership on the commission, no member shall serve as an officer or committee member of any political party organization. The governor may, at any time, after notice and hearing, remove any commissioner for neglect of duty, malfeasance, misfeasance or nonfeasance in office.

**History:** En. Subd. (a), Sec. 10, Ch. 137, L. 1937; amd. Sec. 1, Ch. 102, L. 1953.

#### **Amendment**

The 1953 amendment substituted the words "by and with the advice and consent of the senate" for the words "on a nonpartisan merit basis within sixty days after the passage of this act and after any vacancy occurs in its membership" in the first sentence; inserted the words "shall be from different political parties and shall serve for terms of four (4) years, provided, however, that one (1) of those first appointed after this act takes effect shall serve for a term of two (2) years. They" after the words "Two (2) of the members of the commission" in the second sentence; deleted a sentence which read "Each per diem member shall hold office for a term of six years, except that (1) a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the member first taking office after the date of enactment of this act shall expire, as designated by the governor at the time of appointment, one at the end of three years, the other at the end of six years" and deleted the word "in-

efficiency" which appeared after the words "commissioner for" in the last sentence.

#### **Repealing Clause**

Section 2 of Ch. 102, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 102, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

#### **Removal of Third Member**

The term of office of the third member of the commission who is the executive director is not fixed by law and therefore he holds office at the pleasure of the governor and may be removed without hearing. State ex rel. Bonner v. District Court, 122 M 464, 484, 206 P 2d 166, 175.

The provisions of this section with respect to removal of members of the commission by the governor do not limit the power of the governor with respect to removal of the third member of the commission. State ex rel. Bonner v. District Court, 122 M 464, 484, 206 P 2d 166, 171.

### **87-120. Administration—duties and powers of commission.**

#### **References**

Cited or applied in State ex rel. Bonner

v. District Court, 122 M 464, 484, 206 P 2d 166.

**87-126. Subpoenas.** In case of contumacy by, or refusal of any person, to obey a subpoena issued to such person, as set forth in section 87-125,



thereupon a commissioner, the commission, the chairman of an appeal tribunal, or any duly authorized representative of any of them, may make application to any court of this state within the jurisdiction of which the particular inquiry is carried on, or within the jurisdiction of which said person charged with contumacy, or refusal to obey, is found, or resides, or conducts business, and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the chairman of an appeal tribunal, a commissioner, the commission, or any duly authorized representative of any of them there to produce evidence if so ordered or there to give testimony touching the matters under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena of the commission, the chairman of an appeal tribunal or any duly authorized representative of any of them shall be punished by a fine of not more than two hundred (\$200.00) dollars or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

**History:** En. Subd. (g), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1955.

#### Amendment

The 1955 amendment substituted the words "In case of contumacy by, or refusal of any person \* \* \* and such court shall have jurisdiction" for the words "In case of contumacy by, or refusal to obey a subpoena issued to any person, any

court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal, the commission or any duly authorized representative of any of them shall have jurisdiction."

**87-128. State-federal cooperation.** In the administration of this act, the commission shall cooperate to the fullest extent consistent with the provisions of this act, with the secretary of labor, pursuant to the provisions of the social security act, as amended; shall make such reports, in such form and containing such information as the secretary of labor may from time to time require, and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the secretary of labor governing the expenditures of such sums as may be allotted and paid to this state under title III of the social security act, as amended, for the purpose of assisting in the administration of this act.

Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

**History:** En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957.

#### Amendment

The 1957 amendment substituted "secretary of labor, pursuant to the provisions

of the social security act, as amended" for "social security board, created by the social security act, approved August 14, 1935, as amended" and thereafter wherever appearing in said section substituted "secretary of labor" for "social security board."

**87-130. Acquisition of property, etc.** Subject to the approval of the state board of examiners, the commission may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana. Subject to the approval of the state board of examiners, the commission may sell any equipment, supplies or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment compensation administration fund. In the event the duties, or any part thereof, of the commission shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the commission, with the approval of the state board of examiners, may lease such equipment and real property to the federal government, or such agency, but the title thereto shall remain in the state of Montana.

**History:** En. Sec. 6, Ch. 233, L. 1943;  
amd. Sec. 8, Ch. 171, L. 1957.

**Amendment**

The 1957 amendment added the third sentence.

**87-133. Unemployment compensation administration fund—special fund.** There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited, appropriated or paid into this fund are hereby appropriated and made available to the commission. All moneys in the fund shall be expended solely for the purpose of defraying the costs of administration of this act and costs of administration of such other legislation as shall be specifically delegated to the commission for administration by the legislature. All moneys received and deposited in said fund for administration expense from the United States of America or any agency thereof, pursuant to section 302, title III of the social security act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this act. The fund shall consist of (1) all moneys received from the United States of America or any agency thereof, pursuant to section 302, title III of the social security act, as amended, and (2) all moneys appropriated by the state from the general fund for the purpose of administering this act, all interest and penalties collected on past due contributions as provided by section 87-135; all moneys, trust funds, supplies, facilities or services furnished, deposited, paid and received from the United States of America, or any agency thereof, from this state or any agency thereof, from any other state or any of its agencies, from political subdivisions of the state, or any other source for administrative expense and purpose. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 87-113 shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in section 87-113. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balance in this fund shall not lapse at any time, but shall be continuously available to the commission for the expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection

with the unemployment compensation administration fund in an amount to be fixed by the commission and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment compensation fund under section 87-112, shall be paid from the moneys in the unemployment compensation administration fund.

**History:** En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957.

#### Amendments

The 1955 amendment substituted "United States of America, or any agency thereof" for "social security board, or its successor" both times it appears and "secretary of labor" for "social security board."

The 1957 amendment added the sixth sentence.

**87-134. Reimbursement of fund.** This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of any of the moneys received after July 1, 1941, from the United States of America, or any agency thereof, under title III of the social security act, any unencumbered balances in the unemployment compensation administration fund as of that date, any moneys thereafter granted to this state pursuant to the provisions of the Wagner-Peyser act, and any moneys made available by the state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of this act. Such moneys shall be promptly supplied by moneys furnished by the state of Montana or any of its subdivisions for the use of the unemployment compensation commission and used only for purposes approved by the secretary of labor. The commission shall, if necessary, promptly report to the governor and the governor to the legislature, the amount required for such replacement. This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the social security act.

**History:** En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955.

#### Amendment

The 1955 amendment inserted the words

"of the" before the words "moneys received after July 1, 1941" and substituted the words "United States of America, or any agency thereof" for "social security board" and "secretary of labor" for "social security board" each time it appears.

### 87-135. Penalty and interest on past due contributions.

Construction, application, and effect, with respect to social security and unemployment compensation taxes, of statutes

imposing penalties for tax evasion or default. 7 ALR 2d 1074.

**87-138. Refunds.** If not later than three (3) years after the date on which any contributions or interest thereon became due, or not later than one (1) year from the date on which payment was made, whichever is later, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjust-



ment cannot be made, and the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commission shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the commission's own initiative. If the commission shall determine that an employer has paid contributions to this state under this act, when such contributions should have been paid to another state, under a similar act of such other state, transfer of such contributions to such other state shall be made upon discovery, or upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time. In the event that this act is not certified by the secretary of labor under section 1603 of the internal revenue code, as amended, 1939, for any year, then and in that event, refunds shall be made of all contributions required under this act from employers for that year.

**History:** En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957.

#### **Amendments**

The 1955 amendment substituted "secretary of labor" for "social security board."

The 1957 amendment inserted the words "or not later than one (1) year from the date on which payment was made, whichever is later" in the first sentence and added the third sentence.

#### **Construction**

This section is general in scope while

section 87-109 lends itself to the specific subject of experience ratings and where one statute deals with a subject in general and comprehensive terms and another in a more minute and definite way, the two should be read together if possible but to the extent of any repugnancy between them the special will prevail over the general statute. Hence, an employer could not make application for an adjustment under this section where he did not avail himself of the right to file a written request for a redetermination of classification within 30 days after receipt of such notice as provided for by section 87-109. *Wymont Tractor & Equipment Co. v. Unemployment Compensation Comm.*, 128 M 501, 278 P 2d 208, 210.

**87-145. Penalties—falsity or wilful nondisclosure—violations by employer or agent—violation of act by regulations—wrongfully collecting benefits.** (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, or under an employment security law of any other state, or territory or the federal government either for himself or for any other person, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than five hundred (\$500.00) dollars or by imprisonment for not longer than thirty (30) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any

contribution or other payment required from an employing unit under this act, or under the employment security law of any other state, or territory or the federal government or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than five hundred (\$500.00) dollars or by imprisonment for not longer than sixty (60) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this act or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than five hundred (\$500.00) dollars or by imprisonment for not longer than sixty (60) days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this act for the collection of past due contributions. Action for collection of overpaid benefits shall be brought within five (5) years after the date of such overpayment, otherwise to be barred as provided in section 93-2604.

**History:** En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955.

#### Amendments

The 1951 amendment inserted the words "or under an employment security law of any other state, or territory or the federal government" in subsections (a) and (b), inserted the words "less than \$25 nor" in subsections (a), (b) and (c), and raised the maximum term of imprisonment in subsection (a) from 30 days to 60 days.

The 1955 amendment in subd. (a) lowered the maximum term of imprisonment from 60 to 30 days and in subd. (d) added the last sentence.

#### Separability of Provisions

Section 2 of Ch. 150, L. 1951 read: "If any clause, sentence, section, paragraph or part of this act shall for any reason, be

adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

#### Repealing Clause

Section 3 of Ch. 150, L. 1951 repealed all acts or parts of acts in conflict therewith.

#### Effective Date

Section 4 of Ch. 150, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Repayment of unemployment compensation benefits erroneously paid. 5 ALR 2d 860.

**87-146. Representation in court.** (a) In any civil action to enforce the provisions of this act the commission and the state may be represented by any qualified attorney who is employed by the commission and is designated by it for this purpose or at the commission's request, by the attorney general.

(b) All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the prosecuting attorney of the county wherein the crime was committed.

**History:** En. Sec. 17, Ch. 137, L. 1937;  
amd. Sec. 8, Ch. 164, L. 1955.

stituted the words "of the county wherein the crime was committed" for the words "of any county in which the employer has a place of business or the violator resides."

**Amendment**

The 1955 amendment in subd. (b) sub-

**87-148. Definitions.** As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll" means the average of the annual payrolls of an employer for the last three (3) or five (5) preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year; provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year.

(e) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(f) "Commission" means the unemployment compensation commission established by this act.

(g) "Contributions" means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January



1, 1936, had in its employ one (1) or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit which for some portion of a day in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year, has or had in employment, one or more individuals (irrespective of whether the same individuals are or were employed in each such day); or whose total annual payroll within either the current or the preceding calendar year, exceeds the sum of five hundred dollars (\$500.00);

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act), and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which, having become an employer under paragraph (1), (2) or (3) has not, under section 87-110, ceased to be an employer subject to this act; or

(5) For the effective period of its election pursuant to section 87-110 (c) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state and (I) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (II) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the commission approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the commission that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall not include:

(A) Agricultural labor; The term "agricultural labor" includes all services performed—

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity commonly known as agricultural commodities, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used ex-

clusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(5) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;

(E) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or wild life and anglers clubs or associations, and services performed in the employ of churches, charities, benevolent, fraternal, nonprofit societies and like associations as defined in section 15-1401, Revised Codes of Montana, 1947, where said services are on a part-time basis and do not constitute the major portion of income to the individual performing such services, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(F) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(G) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of any instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks;



(H) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this act;

(I) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(J) Services performed by real estate and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the commission may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, Hawaii, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Dominion of Canada.

**History:** En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 legislature. Once by Sec. 1 of Ch. 177, Laws 1959 and once by Sec. 1 of Ch. 178, Laws 1959. Both acts are effective March 7, 1959. The acts amended this section in different respects and do not appear in conflict with each other, except for minor typographical changes. Therefore the compiler has made a composite section incorporating the changes made by each amendment.

#### Amendments

The 1953 amendment in subsection (j) (6)(A) defined "agricultural labor" and

"farm" by adding (1) to (5) thereunder.

The 1955 amendment in subd. (e) deleted the words "excluding however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe" which appeared after "December 31" and in subd. (j)(3) inserted the word "be" the last time it appears.

The 1957 amendment in subd. (d) substituted "first day of the calendar week in which such individual files a valid claim" for "date of filing of a valid claim by said individual" and substituted "first day of the calendar week in which such individual files his next valid claim" for "date of the next valid claim" and added the proviso clause; in subd. (h), last sentence, deleted the word "to" which appeared between the words "or" and "assist," substituted the word "an" for "any" and deleted the word "all" which appeared between the words "for" and "the"; in subd. (j)(3) substituted "approves" for "approve" and

in subd. (m) inserted "Puerto Rico, the Virgin Islands."

The amendment by Ch. 177, Laws 1959 inserted the words "and services performed in the employ of churches, charities, benevolent, fraternal, nonprofit societies and like associations as defined in section 15-1401, Revised Codes of Montana, 1947, where said services are on a part-time basis and do not constitute the major portion of income to the individual performing such services" in subd. (j)(6)(E).

The amendment by Ch. 178, Laws 1959 added paragraph (J) under subd. (j)(6), and in subd. (m) deleted Alaska and added Guam, and made minor changes in punctuation throughout the entire section.

#### Separability Clause

Section 10 of Ch. 164, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect,

impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

#### Repealing Clauses

Section 2 of Ch. 160, Laws 1953; Sec. 11 of Ch. 164, Laws 1955; Sec. 2 of Ch. 177, Laws 1959 and Sec. 2 of Ch. 178, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### Effective Dates

Section 12 of Ch. 164, Laws 1955 provided the act should be in effect from and after April 1, 1955.

Section 3 of Ch. 177, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

Section 3 of Ch. 178, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

### 87-149. Definitions—continued. (a) Total unemployment:

(1) An individual shall be deemed "totally unemployed" in any week during which he performed no services and with respect to which no wages are payable to him.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(3) As used in this subsection the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of fifteen dollars (\$15.00) in any one week, and the term "services" shall not include that part of odd jobs or subsidiary work, or both, for which remuneration equal to or less than fifteen dollars (\$15.00) per week is payable, or for one (1) day's work not exceeding eight (8) hours, and any overtime worked immediately following such eight (8) hours, whichever is greater.

(b) "Unemployment compensation administration fund," means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

(c) "Wages," means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the commission.

Wage records kept by the commission for the purposes of this act prior to January 1, 1941, shall be kept on the basis of wages payable, and wage records kept by the commission for the purposes of this act after January 1, 1941, shall be kept on the basis of wages paid.

Provided, however, that the term "wages" shall not include—

(1) The amount of any payment made to, or on behalf of, an employee by an employer on account of:

- (A) Retirement, or
- (B) Sickness or accident disability, or
- (C) Medical and hospitalization expenses in connection with sickness or accident disability, or
- (D) Death,
- (E) Services performed for a fraternal benefit society, lodge, order, service club or association having a total annual payroll of less than five hundred dollars (\$500.00) in any calendar year.
- (F) Remuneration paid by any county welfare office from public funds for services performed at the direction and request of such county welfare office.

(d) "Week," means a period of seven (7) consecutive calendar days ending at midnight on Saturday.

(e) "Weekly benefit amount." An individual's "weekly benefit amount," means the amount of benefits he would be entitled to receive for one (1) week of total unemployment.

**History:** En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957.

#### Amendments

The 1955 amendment substituted "fifteen (\$15.00)" for "seven (\$7.00)" each time it appears in subd. (a)(3) and added subd. (c)(1)(F).

The 1957 amendment in subd. (a)(3) inserted the words "and any overtime worked immediately following such eight (8) hours"; in subd. (c) deleted two former sentences which read "Commencing January 1, 1941, "wages," means all remuneration up to and including three thousand (\$3,000.00) dollars in a calendar year paid for personal services, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of all remuneration paid in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commission" and in subd. (d) substituted "a" for "such" and "ending at midnight on Saturday" for "as the commission may by regulations prescribe."

#### Separability Clauses

Section 4 of Ch. 238, Laws 1955 and Sec. 13 of Ch. 171, Laws 1957 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be

adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair, or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

#### Repealing Clauses

Section 5 of Ch. 238, Laws 1955 and Sec. 14, Ch. 171, Laws 1957 repealed all acts or parts of acts in conflict therewith.

#### Effective Dates

Section 6 of Ch. 238, Laws 1955 read "This act shall be in full force and effect from and after April 1, 1955, and section 1 shall apply to all benefit years beginning after April 1, 1955, and the insured status of all claimants who have a benefit year current on or after April 1, 1955, shall be redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision."

Section 15 of Ch. 171, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon. 14 ALR 2d 634.



## TITLE 88—WAREHOUSES AND STORAGE

Chapter 1. Uniform warehouse receipts act, 88-133.

### CHAPTER 1—UNIFORM WAREHOUSE RECEIPTS ACT

Section 88-133. Satisfaction of warehouseman's lien—advertisement and sale of goods and disposition of proceeds.

#### 88-110. (4088) Warehouseman when liable for conversion.

Tort liability of warehouseman for theft by servant. 15 ALR 2d 847. Storage charges collectible by warehouseman guilty of negligence causing injury to, or destruction of, goods of a perishable nature. 32 ALR 2d 918.

**88-133. (4111) Satisfaction of warehouseman's lien—advertisement and sale of goods and disposition of proceeds.** A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized account of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten (10) days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, and advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two (2) consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen (15) days from the time of the first publication; provided, however, that if there is no newspaper published in such place or if no newspaper published in such place will publish

the advertisement provided for herein, the advertisement shall be posted at least ten (10) days before such sale in not less than six (6) conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

**History:** En. Sec. 33, Ch. 154, L. 1917; re-en. Sec. 4111, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1955.

**Amendment**

The 1955 amendment in the last sen-

tence of the second paragraph of subd. (d) inserted the words "provided, however, that" and "or if no newspaper published in such place will publish the advertisement provided for herein."

## TITLE 89—WATERS AND IRRIGATION

- Chapter 1. Water conservation board, state, 89-116.1, 89-116.2.
2. Electrification Authority Act, State, Repealed—Section 1, Chapter 213, Laws of 1953.
8. Water rights—appropriation and adjudication, 89-829, 89-856 to 89-864.
9. Yellowstone River Compact—ratification of, 89-903 to 89-916.
10. Water commissioners—determination of joint rights, 89-1004.
12. Irrigation districts—organization, 89-1209 to 89-1220.
13. Irrigation districts—board of commissioners, powers, duties and elections, 89-1311.
17. Irrigation districts—bonds, 89-1705.
21. Irrigation districts—appeals—miscellaneous provisions, 89-2122.
25. Drainage districts—bonds—refunding indebtedness, 89-2501.
27. Drainage districts—continuation and alteration of existing districts, 89-2702, 89-2704.
28. Drainage districts—miscellaneous provisions, 89-2821 to 89-2825.
30. Sage Creek Basin, 89-3001, 89-3002.
31. Wells, 89-3101 to 89-3103.

### CHAPTER 1—WATER CONSERVATION BOARD, STATE

- Section 89-116.1. Water conservation bond fund.
- 89-116.2. Purchase of bonds.

#### 89-102. (349.2) Definitions.

##### References

Cited in State ex rel. Livingston v. State

Water Conservation Board, — M —, 332 P 2d 913, 917.

#### 89-104. (349.4) Acquisition of necessary property.

##### Ditches

Ditches of the state water conservation board belong to the state. State ex rel.

Livingston v. State Water Conservation Board, — M —, 332 P 2d 913, 919.

#### 89-105. (349.5) Power of board to construct works and to act, etc.

##### References

Cited in State ex rel. Livingston v. State

Water Conservation Board, — M —, 332 P 2d 913, 918.

#### 89-106. Water conservation board may construct irrigation works, etc.

##### Bridge Repairs

A necessary implication, which a reading of this act (89-101 et seq.) together raises, is that concomitant with the duty of constructing bridges, so as to restore roads, highways and streets to their former usefulness, is a duty of the board to maintain bridges made necessary by the project. State ex rel. Livingston v. State Water Conservation Board, — M —, 332 P 2d 913, 919.

On appeal from a mandamus proceeding to force state water conservation board to repair and rebuild bridges over ditch,

owned by board where it crosses city streets, before the supreme court could affirm the judgment of the district court it had to be shown that some law enjoined upon board an affirmative duty to repair the bridges in question. State ex rel. Livingston v. State Water Conservation Board, — M —, 332 P 2d 913, 915, 916.

This section reveals no intention of the legislature that the board has the affirmative duty to repair bridges which are necessitated by its works. State ex rel. Livingston v. State Water Conservation Board, — M —, 332 P 2d 913, 917.

#### 89-111. (349.8) Trust indenture, resolution and covenants of board.

##### References

Cited in State ex rel. Livingston v. State

Water Conservation Board, — M —, 332 P 2d 913, 918.



**89-115. (349.12) Water funds—rates—sale of water—lease and sale, etc.****References**

Cited in State ex rel. Livingston v.

State Water Conservation Board, — M

—, 332 P 2d 913, 918.

**89-116.1. Water conservation bond fund.** For the purpose of acquiring and administering the outstanding water conservation revenue bonds issued for seventeen [17] major irrigation projects owned and constructed by the state water conservation board, there is hereby created a fund which shall hereinafter be designated "Water Conservation Bond Fund," which shall consist of all moneys that may be appropriated thereto by the legislative assembly from other funds in the state treasury; all sums received from the sale of water through water purchase contracts or otherwise from said seventeen [17] irrigation projects, except those funds which are specifically collected for the operation and maintenance of said projects; and all other income or other benefits arising from, out of, or in connection with the ownership of said projects from whatever source derived.

**History:** En. Sec. 1, Ch. 148, L. 1951.**Title of Act**

An act creating a water conservation bond fund to be designated the "Water Conservation Bond Fund"; providing what moneys said fund shall consist of; providing for the purchase of water conser-

vation bonds of the state of Montana out of moneys in said fund; providing said bonds shall be held and administered by the state water conservation board for the benefit of said fund; providing for the transfer of moneys in said fund to the state general fund and repealing all acts or parts of acts in conflict herewith.

**89-116.2. Purchase of bonds.** From the moneys appropriated and credited to the "Water Conservation Bond Fund," there shall be paid upon vouchers approved by the state water conservation board and attested by its secretary, the amount of one million four hundred fifty thousand dollars (\$1,450,000.00) or such lesser amount as is necessary to fully pay for the said bonds on the seventeen [17] irrigation projects, said bonds to be held by the state water conservation board, and to be administered by the said state water conservation board for the benefit of said "Water Conservation Bond Fund." All sums as remain in said fund on June 30, 1952 and on each succeeding June 30, shall be transferred to the state general fund.

**History:** En. Sec. 2, Ch. 148, L. 1951.**Effective Date****Repealing Clause**

Section 3 of Ch. 148, L. 1951 repealed all acts or parts of acts in conflict therewith.

Section 4 of Ch. 148, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

**89-126. (349.23) Board a body corporate.****References**

Cited in State ex rel. Livingston v.

State Water Conservation Board, — M

—, 332 P 2d 913, 916.

**CHAPTER 2—ELECTRIFICATION AUTHORITY ACT, STATE**

(Repealed—Section 1, Chapter 213, Laws of 1953)

**89-201 to 89-215. (349.39 to 349.53) Repealed.****Repeal**

These sections (Secs. 1 to 15, Ch. 98, L. 1935), which comprised the State Electri-

fication Authority Act, were repealed by Sec. 1, Ch. 213, Laws 1953.

## CHAPTER 7—DAMS AND RESERVOIRS—CONSTRUCTION AND EXAMINATION OF

**89-701. (2658) Dams and reservoirs—how constructed.****Application**

An instruction in the precise language of this section should not be given where

the plaintiff is suing on the theory of common-law negligence. *Richland County v. Anderson*, 129 M 559, 291 P 2d 267, 275.

## CHAPTER 8—WATER RIGHTS—APPROPRIATION AND ADJUDICATION

- Section 89-829. Procedure for appropriating waters of adjudicated streams.  
 89-856. Clark Fork river—impounding of water—appropriation.  
 89-857. Conveyance of stored water for irrigation through a natural channel of a stream—petition to be filed in district court—contents of petition.  
 89-858. Notice of hearing.  
 89-859. Objections and hearing.  
 89-860. Order and decree of court.  
 89-861. Authority of water commissioner.  
 89-862. Term of office of water commissioner and compensation.  
 89-863. Penalty for interference.  
 89-864. Application of act and jurisdiction.

**89-801. (7093) What waters may be appropriated.****Diffused Surface Water**

Defendants could not be prevented from collecting diffused surface waters on their lands since plaintiffs could not make a valid appropriation for use of such water on their lands located a number of miles below. *Doney v. Beatty*, 124 M 41, 220 P 2d 77, 82.

**Limitation on Rights**

The rights of an appropriator of water are limited to the natural condition of the stream at the time the appropriation is made. *Jones v. Hanson*, 133 M 115, 320 P 2d 1007, 1014.

**Prior Rights**

Where plaintiff had over the years constructed a series of dikes in order to spread over his land the water which

would flow down a dry gulley after the melting of snow or a heavy rainfall, he had a prior right to the extent that his project was finished. He who first diverts the water to a beneficial use has the prior right thereto where the right is based upon the custom and practice of the early settlers and where there was no compliance with the statute. *Midkiff v. Kinch-elope*, 127 M 324, 263 P 2d 976, 978. (See, however, the dissenting opinion in the case in which it was contended that the waters were flood and waste waters and to which the defendant had a right to impound in a stock reservoir, 127 M 324, 263 P 2d 976, 979.)

Liability, as regards surface waters, for raising surface level of land. 12 ALR 2d 1338.

**89-803. (7095) Point of diversion may be changed—change of use.****Burden of Proof of Injury**

Where court concluded that the defendant was entitled to use its water rights out of a certain creek in accordance with a practice which had continued over 50 years, the burden was upon plaintiffs to show injury or prejudice if they sought to

prevent the practice. *Forrester v. Rock Island Oil & Refining Co.*, 133 M 333, 323 P 2d 597, 603.

Liability, as regards surface waters, for raising surface level of land. 12 ALR 2d 1338.

**89-804. (7096) Water may be turned into natural channels, etc.****References**

Cited or applied in *Meine v. Ferris*, 126 M 210, 247 P 2d 195, 198.

**89-805. (7097) Return of surplus water to stream.****Surplus Water**

Water in excess of amount which defendant was entitled to appropriate and which ran over spillway on to plaintiff's land

was "surplus water" and not artificial water. *Clausen v. Armington*, 123 M 1, 212 P 2d 440.

**89-807. (7098) First in time, first in right.****References**

Cited or applied in *Meine v. Ferris*,  
126 M 210, 247 P 2d 195, 198.

**89-810. (7100) Notice of appropriations.****Cross-Reference**

See note to sec. 89-812. *Clausen v. Armington*, 123 M 1, 212 P 2d 440.

**Necessity of Notice**

A person may make a valid appropriation of water by actual diversion and use thereof without filing a notice of appropriation. *Clausen v. Armington*, 123 M 1, 212 P 2d 440.

**Operation and Effect**

Plaintiffs were not entitled to any water rights by virtue of a notice which was given 16 years before the enactment of this section, and where the place the water was to be taken as stated in the notice was a mile from where the plaintiff is claiming the water. *Stearns v. Benedick*, 126 M 272, 247 P 2d 656, 657.

**89-811. (7101) Diligence in appropriating.****Cross-Reference**

See note to sec. 89-812. *Clausen v. Armington*, 123 M 1, 212 P 2d 440.

**89-812. (7102) Effect of failure.****Date of Appropriation Where Statute is Not Complied With**

Where ditch was not constructed within reasonable time after date of notice of appropriation, the date of appropriation would not relate back to the date of such notice but would date from the time the

water was actually used. *Clausen v. Armington*, 123 M 1, 212 P 2d 440.

**References**

Cited in *Midkiff v. Kincheloe*, 127 M 324, 263 P 2d 976, 978.

**89-818. (7108) Miner's inch equivalent in gallons.****References**

Cited or applied in *Clausen v. Armington*, 123 M 1, 212 P 2d 440; *Stearns v. Benedick*, 126 M 272, 247 P 2d 656, 658.

**89-821. (7111) Highways to be protected.****Application of Section**

This section does not apply to the state water conservation board. State ex rel.

*Livingston v. State Water Conservation Board*, — M —, 332 P 2d 913, 916.

**89-822. (7112) Penalty for violating preceding section.****References**

Cited in State ex rel. *Livingston v.*

State Water Conservation Board, — M —, 332 P 2d 913, 916.

**89-829. (7119) Procedure for appropriating waters of adjudicated streams.** (1) Any person hereafter desiring to appropriate the waters of a river, or stream, ravine, coulee, spring, lake, or other natural source of supply concerning which there has been an adjudication of rights between appropriators or claimants, as contemplated in section 89-839, shall:

(a) employ a competent engineer to make a survey of the ditch, or aqueduct, whereby the water is to be conveyed from the source of supply, or the dam or other work whereby the water is to be impounded, or both; or

(b) cause to be prepared an aerial photograph with a drawing thereon showing the course of the proposed ditch or aqueduct, or the location of the proposed dam or other work, or both, together with a description of the



course of said ditch or the location of said dam attached thereto; and the appropriators shall file with the clerk of the court in the county in which the water is appropriated a petition giving the amount of water sought to be appropriated, a description by name or otherwise of the water course or body from which he intends to appropriate the water, and a general description of the ditch or aqueduct, stating its size, length, and capacity, showing the proposed means of appropriation and use of the water, and also the place of use thereof. If the means of appropriation be a reservoir by which the water is to be impounded, the petition shall state the location and size thereof, together with the contemplated manner of its construction and the means of conveying the water to the place of contemplated use, and the contemplated use.

(2) There shall be filed with the petition a map or aerial photograph as hereinbefore provided showing the point of, and means of diversion, and the course of the ditch or aqueduct to its terminus, and if a reservoir, the contour line thereof, the height and width of the dam, the point and means of discharge therefrom, and the spillway. If the appropriator shall intend to mingle the waters appropriated from one stream with another, or shall intend to deposit the waters impounded in a reservoir into a stream, he shall so state.

(3) The appropriator shall declare in his petition that the water rights sought by him shall be subject to, and that in the use thereof he shall be bound by the terms of any decree theretofore rendered by a court of competent jurisdiction adjudicating the waters of such river, stream, ravine, coulee, spring, lake, or other natural source of supply, or, any body of water to which the same may be tributary, provided that water stored in a reservoir pursuant to an appropriation hereunder which is subsequent to an adjudication of waters in a flowing stream when so released from storage shall not be considered as a part of the natural flow of said adjudicated stream.

(4) The appropriator shall, as near as may be, give the names of all appropriators or claimants who have, or appear to have, rights in the source of supply, from which the appropriation is sought, and whose rights may be in anywise affected by the appropriation, and in the petition the petitioner shall be named as plaintiff, and all other parties as defendants.

**History:** En. Sec. 4, Ch. 228, L. 1921; re-en. Sec. 7119, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1957.

#### **Amendment**

The 1957 amendment divided subd. (1) into subsections (a) and (b); in subsec. (b) inserted the words "cause to be prepared an aerial photograph with a drawing thereon showing the course of the proposed ditch or aqueduct, or the location of the proposed dam or other work, or both, together with a description of the

course of said ditch or the location of said dam attached thereto;" and deleted the words "prepared by the engineer" which appeared between the words "capacity" and "showing"; in subd. (2) inserted the words "or aerial photograph as hereinbefore provided" and in subd. (3) added the proviso clause.

#### **Repealing Clause**

Section 2 of Ch. 179, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**89-856. Clark Fork river—impounding of water—appropriation.** The waters of the Clark Fork river may be impounded or restrained within the state of Montana for a distance not exceeding twenty-five [25] miles from

the Idaho-Montana boundary line, by a dam located on said river in the state of Idaho, and constructed by any person, firm, partnership or corporation authorized to do business in the state of Montana, provided, however, that any present or future appropriations of water in the water shed in the state of Montana for irrigation and domestic use above said dam shall have priority over water for power use at said dam.

**History:** En. Sec. 1, Ch. 3, L. 1951.

#### **Title of Act**

An act authorizing the impounding and restraining within the state of Montana, the waters of the Clark Fork River for a distance not exceeding twenty-five miles from the Idaho-Montana boundary line, by a dam located on said river, in the state of Idaho, and constructed by any person, firm, partnership or corporation authorized to do business in the state of Montana, and providing that present and future appropriations of water for irrigation and domestic use in Montana shall have priority over water for power use at said dam, and providing that this act shall take effect upon its passage and approval.

#### **Preamble**

WHEREAS, water is one of Montana's great natural resources; and

WHEREAS, the Clark Fork river flows from Montana to Idaho; and

WHEREAS, in the future a compact may be entered into by the states and the United States for the natural resources of the Columbia River basin; and

NOW, THEREFORE, this water resource shall be taken into consideration in such compact for allocation to Montana.

#### **Effective Date**

Section 2 of Ch. 3, L. 1951 provided the act should be in effect upon its passage and approval. Approved January 25, 1951.

#### **References**

Cited or applied in State ex rel. Bartholomew v. District Court, 126 M 183, 248 P 2d 215.

**89-857. Conveyance of stored water for irrigation through a natural channel of a stream—petition to be filed in district court—contents of petition.** Whenever the owner of a reservoir constructed, operated and maintained for the purpose of storing and supplying water for irrigation, or whenever any person has been authorized to operate and maintain a reservoir constructed for the purpose of storing, supplying and distributing water to a person or persons entitled to the use thereof for irrigation, desires to use the natural channel of a stream for the purpose of conveying such stored water from the reservoir to the place or places of such use, such owner or person or persons may file in the district court of any county in which the natural channel of a stream, or any part thereof, is located, a petition to that effect setting forth: (1) The name of the petitioner and whether he is the owner of the reservoir constructed and maintained for the purpose of storing and supplying water for irrigation and is entitled to the use of the water stored in said reservoir for such purposes, or whether he is authorized to operate and maintain the reservoir, constructed for the purpose of storing, supplying and distributing water to the person or persons entitled to the use thereof for irrigation; (2) The location of the reservoir and the amount of water stored therein; (3) The name and location of that part of the natural channel of the stream proposed to be used to convey such stored water to the place or places of use; (4) The amount of stored water proposed to be released by petitioner for irrigation; (5) The period of time over which it is proposed to convey such stored water; and (6) The name or names of the person or persons entitled to the use of such stored water for irrigation, and the location of the place or places of use.

**History:** En. Sec. 1, Ch. 114, L. 1957.

**Title of Act**

An act providing for the conveyance of stored water through the natural channel of a stream from an irrigation reservoir to the place of use; providing for the filing of a petition in district court by the owner of such a reservoir and the water stored therein, or by any person authorized to operate and maintain a storage reservoir for irrigation; providing for the requirements of said petition; providing for a hearing of said petition and notice thereof; providing for objections to said petition and the hearing; providing for an order

and decree of court granting the right to convey stored water from the reservoir to the place of use and appointing a water commissioner or commissioners to distribute the said stored water to those who are entitled to the use thereof for irrigation; providing for the authority of the water commissioner or commissioners and their duties; providing for the term of office or water commissioner and fixing his compensation; providing for penalties for violations of the act; providing for the application of the act and jurisdiction; and repealing all acts and parts of acts in conflict herewith and providing for an effective date.

**89-858. Notice of hearing.** Upon the filing of the petition the court or judge shall fix a time and place for hearing of said petition which time shall not be less than ten (10) days after the filing of said petition. The petitioner shall give notice of said hearing by causing notices to be posted in at least three (3) public places in each county wherein is located a part of the natural channel by which it is proposed to convey the stored water from the reservoir to the place or places of use at least ten (10) days before the date of the hearing. Such notices shall contain the name of the petitioner, the purpose of the petition, and the time and place of the hearing.

**History:** En. Sec. 2, Ch. 114, L. 1957.

**89-859. Objections and hearing.** At the time set for hearing, or any subsequent time to which the hearing may be postponed, any person whose property rights may be affected by the granting of the petition, may appear and file written objections to the petition and contest the same. On the hearing, upon due proof of the posting of the notice as required by the preceding section, the court or judge must proceed to hear the petition and any objections that may be filed or presented thereto. Upon such hearing, witnesses may be compelled to appear and testify, in the same manner, and with like effect, as in civil actions.

**History:** En. Sec. 3, Ch. 114, L. 1957.

**89-860. Order and decree of court.** If the court or judge is satisfied, after a hearing upon the petition, that the petitioner is the owner of a reservoir constructed and maintained for the purpose of storing and supplying water for irrigation and that he is entitled to the use of the water stored in said reservoir for said purposes, or whether he is authorized to operate and maintain a reservoir constructed for the purpose of storing, supplying and distributing water to the person or persons entitled to the use thereof for irrigation, and the petitioner desires to convey the said stored water, or a part thereof, through the natural channel of the stream from the reservoir to the place or places of use, a decree shall be made and entered by the court or judge granting and decreeing to the petitioner the right to convey said stored water, or a part thereof, through the said natural channel of the stream from the reservoir to the place or places of use, and the court or judge shall appoint one or more water commissioners who



shall have the authority to distribute such stored water to the person or persons who are entitled to the use thereof for irrigation.

An appeal shall lie from the decree of the district court to the supreme court as in other civil actions.

**History:** En. Sec. 4, Ch. 114, L. 1957.

**89-861. Authority of water commissioner.** Each water commissioner, appointed under this act, shall admeasure and distribute the stored water to the person or persons entitled to the use thereof. The petitioner shall keep the water commissioner or water commissioners advised as to the amount of stored water to be delivered to each person. Each water commissioner shall have the authority to adjust the headgates, or other means of diversion, of all ditches of all appropriators from the natural channel for the purpose of insuring that the stored water is conveyed to persons entitled to the use thereof and not taken or used by others. The duties and the authority of the water commissioner or water commissioners shall extend over the full length of the part of the natural channel used as a means of conveyance of the stored water.

**History:** En. Sec. 5, Ch. 114, L. 1957.

**89-862. Term of office of water commissioner and compensation.** Each water commissioner, appointed under the provisions of this act, shall hold his office for such a period of time as may be designated by the court or judge, and the court or judge shall fix the compensation of each water commissioner which compensation shall be paid by the owner of the reservoir or by the person authorized to operate and maintain the same.

**History:** En. Sec. 6, Ch. 114, L. 1957.

**89-863. Penalty for interference.** After the water commissioner or water commissioners have adjusted the headgates, or other means of diversion, of all ditches, the owners of which are not entitled to the use of such stored water, as provided in section 4 [89-860], hereof, any person who shall raise or tamper with any such headgate or other means of diversion, in such manner as to misappropriate any portion of such stored water to his own use and benefit, whether he be the owner of such headgate or other means of diversion, or not, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00), nor more than one thousand dollars (\$1,000.00), or imprisonment in the county jail not more than six (6) months, or by both such fine and imprisonment.

Whenever any water commissioner, appointed under this act, shall discover any person in the act of committing a misdemeanor declared in this section, he shall arrest such person and turn him over to the sheriff of the county in which the misdemeanor was committed and he shall file with the county attorney of such county an affidavit setting out the facts with reference to the commission of such misdemeanor.

**History:** En. Sec. 7, Ch. 114, L. 1957.

**89-864. Application of act and jurisdiction.** The provisions of this act shall apply only to unadjudicated streams. The district court of any county in which the natural channel, or any part thereof, is located shall

have jurisdiction hereunder and such jurisdiction, once obtained, shall extend into other counties in which any part of the natural channel, used as a means of conveyance of the stored water, is located.

**History:** En. Sec. 8, Ch. 114, L. 1957.

**Effective Date**

**Repealing Clause**

Section 9 of Ch. 114, Laws 1957 read "All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that nothing in this act shall be deemed to repeal section 89-804 of the Revised Codes of Montana, 1947."

Section 10 of Ch. 114, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

## CHAPTER 9—YELLOWSTONE RIVER COMPACT—RATIFICATION OF

- Section 89-903.** Yellowstone River Compact—approval.  
 89-904. Legislative and congressional approval necessary.  
 89-905. Purpose of the act.  
 89-906. Definitions.  
 89-907. Filing written statement with the state engineer.  
 89-908. Duty to install weir or other measuring device.  
 89-909. Duty to measure water.  
 89-910. Rights acquired prior to January 1, 1950 not to be impaired by nor subject to the act.  
 89-911. Domestic and stock uses not within the act.  
 89-912. State engineer to make rules and regulations.  
 89-913. Act applies to adjudicated and non-adjudicated waters.  
 89-914. State engineer to make record available.  
 89-915. County attorneys to perform certain services.  
 89-916. Penalty.

### 89-901, 89-902. Repealed.

**Repeal**

These sections (Secs. 1, 2, Ch. 85, L. 1945), relating to the approval and rati-

fication of the Yellowstone River Compact, were repealed by Sec. 1, Ch. 91, Laws 1953, effective February 25, 1953.

**89-903. Yellowstone River Compact—approval.** The legislative assembly of the state of Montana hereby approves and ratifies the compact designated as the "Yellowstone River Compact," dated at the city of Billings, state of Montana, on the 8th of December, 1950, signed by Fred E. Buck, A. W. Bradshaw, H. W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P. F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R. R. Renne and Keith W. Trout, as state representatives of the state of Montana on a compact commission between the states of Montana, North Dakota and Wyoming; which compact is as follows:

## YELLOWSTONE RIVER COMPACT

The state of Montana, the state of North Dakota, and the state of Wyoming, being moved by consideration of interstate comity, and desiring to remove all causes of present and future controversy between said states and between persons in one and persons in another with respect to the waters of the Yellowstone river and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone national park, and desiring to provide for an equitable division and apportionment of such waters, and to encourage the beneficial development and

use thereof, acknowledging that in future projects or programs for the regulation, control and use of water in the Yellowstone river basin the great importance of water for irrigation in the signatory states shall be recognized, have resolved to conclude a compact as authorized under the Act of Congress of the United States of America, approved June 2, 1949 (Public Law 83, 81st Congress, First Session), for the attainment of these purposes, and to that end, through their respective governments, have named as their respective commissioners:

For the state of Montana:

Fred E. Buck  
A. W. Bradshaw  
H. W. Bunston  
John Herzog  
John M. Jarussi  
Ashton Jones  
Chris Josephson  
A. Wallace Kingsbury

P. F. Leonard  
Walter M. McLaughlin  
Dave M. Manning  
Joseph Muggli  
Chester E. Onstad  
Ed F. Parriott  
R. R. Renne  
Keith W. Trout

For the state of North Dakota:

I. A. Acker  
Einar H. Dahl  
J. J. Walsh

For the state of Wyoming:

L. C. Bishop  
Earl T. Bower  
J. Harold Cash  
Ben F. Cochrane  
Ernest J. Goppert  
Richard L. Greene  
E. C. Gwillim  
E. J. Johnson  
Lee E. Keith

N. V. Kurtz  
Harry L. Littlefield  
R. E. McNally  
Will G. Metz  
Mark N. Partridge  
Alonzo R. Shreve  
Charles M. Smith  
Leonard F. Thornton  
M. B. Walker

who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to-wit:

## ARTICLE I

A. Where the name of a state is used in this compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone river system under the authority of said state.

B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory state, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone river system under the authority



of said state, shall be subject to the terms of this compact. Where the singular is used in this article, it shall be construed to include the plural.

## ARTICLE II

A. The state of Montana, the state of North Dakota, and the state of Wyoming are hereinafter designated as "Montana," "North Dakota," and "Wyoming," respectively.

B. The terms "commission" and "Yellowstone river compact commission" mean the agency created as provided herein for the administration of this compact.

C. The term "Yellowstone river basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone river and its tributaries, and includes the area in Montana known as lake basin, but excludes those lands lying within Yellowstone national park.

D. The term "Yellowstone river system" means the Yellowstone river and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone river near Buford, North Dakota, except those portions thereof which are within or contribute to the flow of streams within the Yellowstone national park.

E. The term "tributary" means any stream which in a natural state contributes to the flow of the Yellowstone river, including interstate tributaries and tributaries thereof, but excluding those which are within or contribute to the flow of streams within the Yellowstone national park.

F. The term "interstate tributaries" means the Clarks Fork, Yellowstone river; the Big Horn river (except Little Big Horn river); the Tongue river; and the Powder river, whose confluences with the Yellowstone river are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

G. The terms "divert" and "diversion" mean the taking or removing of water from the Yellowstone river or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone river or of the tributary from which it is taken.

H. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.

I. The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

J. The term "stock water use" shall mean the use of water for livestock and poultry.

## ARTICLE III

A. It is considered that no commission or administrative body is necessary to administer this compact or divide the waters of the Yellowstone river basin as between the states of Montana and North Dakota. The provisions of this compact, as between the states of Wyoming and Montana, shall be administered by a commission composed of one representative from

the state of Wyoming and one representative from the state of Montana, to be selected by the governors of said states as such states may choose, and one representative selected by the director of the United States geological survey or whatever federal agency may succeed to the functions and duties of that agency, to be appointed by him at the request of the states to sit with the commission and who shall, when present, act as chairman of the commission without vote, except as herein provided.

B. The salaries and necessary expenses of each state representative shall be paid by the respective state; all other expenses incident to the administration of this compact not borne by the United States shall be allocated to and borne one-half by the state of Wyoming and one-half by the state of Montana.

C. In addition to other powers and duties herein conferred upon the commission and the members thereof, the jurisdiction of the commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this compact, and recommendations to such states upon matters connected with the administration of this compact, and the commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective states, and shall compile a report for each year ending September 30 and transmit it to the governors of the signatory states on or before December 31 of each year.

D. The secretary of the army; the secretary of the interior; the secretary of agriculture; the chairman, federal power commission; the secretary of commerce, or comparable officers of whatever federal agencies may succeed to the functions and duties of these agencies, and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the compact commission, shall cooperate, ex-officio, with the commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the compact; and these officers may perform such other services related to the compact as may be mutually agreed upon with the commission.

E. The commission shall have power to formulate rules and regulations and to perform any act which they may find necessary to carry out the provisions of this compact, and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the state engineer of each of the signatory states for public inspection.

F. In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this compact, then the member selected by the director of the United States geological survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the states of Wyoming and Montana and said member selected by the director of the United States geological survey, each being entitled to one vote.

G. The commission herein authorized shall have power to sue and be sued in its official capacity in any federal court of the signatory states, and may adopt and use an official seal which shall be judicially noticed.

## ARTICLE IV

The commission shall itself, or in conjunction with other responsible agencies, cause to be established, maintained, and operated such suitable water gaging and evaporation stations as it finds necessary in connection with its duties.

## ARTICLE V

A. Appropriative rights to the beneficial uses of the water of the Yellowstone river system existing in each signatory state as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.

B. Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone river as of January 1, 1950, there is allocated to each signatory state such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph A of this Article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each state for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

1. **Clarks Fork, Yellowstone River**

- a. To Wyoming 60%
- To Montana 40%

b. The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.

2. **Big Horn River (Exclusive of Little Big Horn River)**

- a. To Wyoming 80%
- To Montana 20%

b. The point of measurement shall be below the last diversion from the Big Horn river above its junction with the Yellowstone river, and the inflow of the Little Big Horn river shall be excluded from the quantity of water subject to allocation.

3. **Tongue River**

- a. To Wyoming 40%
- To Montana 60%

b. The point of measurement shall be below the last diversion from the Tongue river above its junction with the Yellowstone river.

4. **Powder River (Including the Little Powder River)**

- a. To Wyoming 42%
- To Montana 58%

b. The point of measurement shall be below the last diversion from the Powder river above its junction with the Yellowstone river.

C. The quantity of water subject to the percentage allocations, in paragraph B 1, 2, 3 and 4 of this Article V, shall be determined on an annual water year basis measured from October 1st of any year through September 30th of the succeeding year. The quantity to which the per-



centage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

1. The total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October 1st to that given date;

2. The net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October 1st to that given date;

3. The net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October 1st to that given date;

4. The quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October 1st to that given date.

D. All existing rights to the beneficial use of waters of the Yellowstone river in the states of Montana and North Dakota, below Intake, Montana, valid under the laws of these states as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this compact. During the period May 1 to September 30, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone river below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams, having their origin in either Montana or North Dakota, situated entirely in said respective states and flowing into the Yellowstone river below Intake, Montana, are allotted to the respective states in which situated.

E. There are hereby excluded from the provisions of this compact:

1. Existing and future domestic and stock water uses of water: Provided, that the capacity of any reservoir for stock water so excluded shall not exceed 20 acre-feet;

2. Devices and facilities for the control and regulation of surface waters.

F. From time to time the commission shall re-examine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just, and equitable, giving consideration among other factors to:

Priorities of water rights;

Acreage irrigated;

Acreage irrigable under existing works; and

Potentially irrigable lands.

## ARTICLE VI

Nothing contained in this compact shall be so construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone river and its tributaries owned by or for Indians, Indian tribes, and their reservations.

## ARTICLE VII

A. A lower signatory state shall have the right, by compliance with the laws of an upper signatory state, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone river system not specifically apportioned to or appropriated by such upper state as provided in Article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper state for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower state: Provided, that such right is subject to the rights of the upper state to control, regulate, and use the water apportioned to and appropriated by it: And provided further, that should an upper state elect, it may share in the use of any such facilities constructed by a lower state to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

B. Each claim hereafter initiated for an appropriation of water in one signatory state for use in another signatory state shall be filed in the office of the state engineer of the signatory state in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the state engineer of the signatory state in which the water is to be used.

C. Appropriations may hereafter be adjudicated in the state in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory state, such adjudications shall be confirmed in that state by the proper authority. Each adjudication is to conform with the laws of the state where the water is diverted and shall be recorded in the county and state where the water is used.

D. The use of water allocated under Article V of this compact for projects constructed after the date of this compact by the United States of America or any of its agencies or instrumentalities, shall be charged as a use by the state in which the use is made: Provided, that such use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

## ARTICLE VIII

A lower signatory state shall have the right to acquire in an upper state by purchase, or through exercise of the power of eminent domain, such lands, easements, and rights-of-way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

## ARTICLE IX

Should any facilities be constructed by a lower signatory state in an upper signatory state under the provisions of Article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

## ARTICLE X

No water shall be diverted from the Yellowstone river basin without the unanimous consent of all the signatory states. In the event water from another river basin shall be imported into the Yellowstone river basin or transferred from one tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in determining its share of the water apportioned in accordance with Article V herein.

## ARTICLE XI

The provisions of this compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in Article XV.

## ARTICLE XII

This compact may be terminated at any time by unanimous consent of the signatory states, and upon such termination all rights then established hereunder shall continue unimpaired.

## ARTICLE XIII

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States Supreme Court, for the protection of any right under this compact or the enforcement of any of its provisions.

## ARTICLE XIV

The physical and other conditions characteristic of the Yellowstone river and peculiar to the territory drained and served thereby and to the development thereof, have actuated the signatory states in the consummation of this compact, and none of them, nor the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

## ARTICLE XV

This compact shall become operative when approved by the legislature of each of the signatory states and consented to and approved by the congress of the United States.



## ARTICLE XVI

Nothing in this compact shall be deemed:

(a) To impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities, in and to the use of the waters of the Yellowstone river basin nor its capacity to acquire rights in and to the use of said waters;

(b) To subject any property of the United States of America, its agencies, or instrumentalities to taxation by any state or subdivision thereof, nor to create an obligation on the part of the United States of America, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) To subject any property of the United States of America, its agencies, or instrumentalities, to the laws of any state to an extent other than the extent to which these laws would apply without regard to the compact.

## ARTICLE XVII

Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of any signatory state or of the United States of America, all other severable provisions of this compact shall continue in full force and effect.

## ARTICLE XVIII

No sentence, phrase, or clause in this compact or in any provision thereof, shall be construed or interpreted to divest any signatory state or any of the agencies of [or] officers of such states of the jurisdiction of the water of each state as apportioned in this compact.

IN WITNESS WHEREOF the commissioners have signed this compact in quadruplicate original, one of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each signatory state.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of Our Lord, one thousand nine hundred and fifty.

Commissioners for the state of Montana:

Fred E. Buck	/S/ Fred E. Buck
A. W. Bradshaw	/S/ A. W. Bradshaw
H. W. Bunston	/S/ H. W. Bunston
John Herzog	/S/ John Herzog
John M. Jarussi	/S/ John M. Jarussi
Ashton Jones	/S/ Ashton Jones
Chris Josephson	/S/ Chris Josephson
A. Wallace Kingsbury	/S/ A. Wallace Kingsbury

P. F. Leonard	/S/ P. F. Leonard
Walter M. McLaughlin	/S/ Walter M. McLaughlin
Dave M. Manning	/S/ Dave M. Manning
Joseph Muggli	/S/ Joseph Muggli
Chester E. Onstad	/S/ Chester E. Onstad
Ed F. Parriott	/S/ Ed F. Parriott
R. R. Renne	/S/ R. R. Renne
Keith W. Trout	/S/ Keith W. Trout

## Commissioners for the state of North Dakota:

I. A. Acker	/S/ I. A. Acker
Einar H. Dahl	/S/ Einar H. Dahl
J. J. Walsh	/S/ J. J. Walsh

## Commissioners for the state of Wyoming:

L. C. Bishop	/S/ L. C. Bishop
Earl T. Bower	/S/ Earl T. Bower
J. Harold Cash	/S/ J. Harold Cash
Ben F. Cochrane	/S/ Ben F. Cochrane
Ernest J. Goppert	/S/ Ernest J. Goppert
Richard L. Greene	/S/ Richard L. Greene
E. C. Gwillim	/S/ E. C. Gwillim
E. J. Johnson	/S/ E. J. Johnson
Lee K. Keith	/S/ Lee K. Keith
N. V. Kurtz	/S/ N. V. Kurtz
Harry L. Littlefield	/S/ Harry L. Littlefield
R. E. McNally	/S/ R. E. McNally
Will G. Metz	/S/ Will G. Metz
Mark N. Partridge	/S/ Mark N. Partridge
Alonzo R. Shreve	/S/ Alonzo R. Shreve
Charles M. Smith	/S/ Charles M. Smith
Leonard F. Thornton	/S/ Leonard F. Thornton
M. B. Walker	/S/ M. B. Walker

I have participated in the negotiation of this compact and intend to report favorably thereon to the congress of the United States.

/S/ R. J. Newell  
 R. J. Newell,  
 Representative of the  
 United States of America.

**History:** En. Sec. 1, Ch. 39, L. 1951.

**Title of Act****Compiler's Note**

The bracketed word "or" was inserted by the compiler.

An act to approve and ratify the "Yellowstone River Compact" between the states of Montana, North Dakota and Wyoming.

**89-904. Legislative and congressional approval necessary.** Said compact shall not be binding or obligatory upon any of the high contracting parties thereto unless and until the same shall have been approved by the legislature of each of the said states and by the congress of the United States. The governor of Montana shall give notice of the ratification and

approval of said compact by the thirty-second legislative assembly of the state of Montana to the governors of each of the remaining signatory states and to the president of the United States.

**History:** En. Sec. 2, Ch. 39, L. 1951.

**89-905. Purpose of the act.** Under the provisions of the Yellowstone river compact (chapter 39, Laws of Montana, 1951 [89-903, 89-904]), all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone river, existing in each signatory state as of January 1, 1950, have been recognized and shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation. All appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone river acquired after January 1, 1950, are subject to distribution in the states of Montana and Wyoming in accordance to the percentages in the different basins as provided in subdivisions B and C of Article V of said compact. The purpose of this act is to provide the means to determine the various appropriative rights to the beneficial uses of water of the interstate tributaries of the Yellowstone river, acquired after January 1, 1950, and the quantity of water diverted and used by each such appropriator during each year, to enable the state of Montana and the Yellowstone river compact commission to comply with and to administer the percentage allocations as provided in subdivisions B and C of Article V of said compact.

**History:** En. Sec. 1, Ch. 92, L. 1953.

#### **Title of Act**

An act relating to the administration of the Yellowstone river compact; defining the purpose of the act; providing for the filing of statement with state engineer of all appropriative claims to the use of water of interstate tributaries of the Yellowstone river acquired after January 1, 1950; defining interstate tributaries;

providing for the installation of measurement devices; providing for the measurement of water; authorizing state engineer to make reasonable rules and regulations; authorizing state engineer to make records available to the Yellowstone river compact commission; providing that county attorneys shall perform certain services; providing for penalties for violations; and repealing of all acts or parts of acts in conflict with the provisions of this act.

**89-906. Definitions.** As used in this act, the following terms shall have the following meaning:

(a) The term "person" shall mean any person, corporation, partnership, association, municipal corporation, agency and all others authorized by the laws of the state of Montana to appropriate water for beneficial uses. Where the singular is used it shall be construed to include the plural.

(b) The term "interstate tributaries" or "interstate tributary" shall mean the following described rivers which contribute to the flow of the Yellowstone river in the state of Montana, including all tributaries thereof: the Clark Fork of the Yellowstone river; the Big Horn river (except the Little Big Horn river); the Tongue river; and the Powder river, whose confluences with the Yellowstone river are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(c) The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, launder-



ing, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(d) The term "stock water use" shall mean the use of water for live-stock and poultry.

(e) The term "divert" and "diversion" shall mean the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

History: En. Sec. 2, Ch. 92, L. 1953.

**89-907. Filing written statement with the state engineer.** Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the state engineer at his office in Helena, Montana, a written statement containing the following information:

(a) The name of the claimant and his address.

(b) Date of appropriation or the date when the water was first applied to a beneficial use.

(c) The quantity of water claimed.

(d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.

(e) The purpose for which the water is claimed and the place of intended use.

(f) The means of diversion.

(g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.

(h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, Revised Codes of Montana, 1947, the name of the county where it was filed.

(i) Whether the appropriation was made from an adjudicated or non-adjudicated stream, river or other source of water.

The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statements are true.

History: En. Sec. 3, Ch. 92, L. 1953.

**89-908. Duty to install weir or other measuring device.** Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the state engineer, and if in his judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured,

he may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order.

**History:** En. Sec. 4, Ch. 92, L. 1953.

**89-909. Duty to measure water.** It shall be the duty of every said claimant to measure all the water being diverted by him and to keep accurate records thereof on forms prescribed and furnished by the state engineer, and within fifteen days after the first day of November of each year to file such written records with the state engineer at his office in Helena, Montana.

**History:** En. Sec. 5, Ch. 92, L. 1953.

**89-910. Rights acquired prior to January 1, 1950 not to be impaired by nor subject to the act.** The rights to the beneficial use of any water of any interstate tributary of the Yellowstone river, acquired prior to and including January 1, 1950, shall not be impaired by nor subject to this act.

**History:** En. Sec. 6, Ch. 92, L. 1953.

**89-911. Domestic and stock uses not within the act.** Any appropriation of water from any interstate tributary of the Yellowstone river made for domestic or stock water uses shall not come within the provisions of this act, provided, that the capacity of any reservoir for stock water shall not exceed twenty acre feet.

**History:** En. Sec. 7, Ch. 92, L. 1953.

**89-912. State engineer to make rules and regulations.** The state engineer shall prescribe and enforce reasonable rules and regulations consistent with this act and the Yellowstone river compact.

**History:** En. Sec. 8, Ch. 92, L. 1953.

**89-913. Act applies to adjudicated and non-adjudicated waters.** The provisions of this act shall apply to both adjudicated and non-adjudicated waters of the interstate tributaries of the Yellowstone river.

**History:** En. Sec. 9, Ch. 92, L. 1953.

**89-914. State engineer to make record available.** The state engineer shall furnish and make available to the Yellowstone river compact commission, from the records filed in his office, all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from said interstate tributaries and any other information that his records may disclose as may be required by the Yellowstone river compact commission.

**History:** En. Sec. 10, Ch. 92, L. 1953.

**89-915. County attorneys to perform certain services.** The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this act within their respective counties as the state engineer shall require.

**History:** En. Sec. 11, Ch. 92, L. 1953.

**89-916. Penalty.** Any person who violates or refuses or neglects to comply with any provision of this act, or any order, rule or regulation

promulgated by the state engineer pursuant thereto or the Yellowstone river compact, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00) for each offense.

**History:** En. Sec. 12, Ch. 92, L. 1953.

#### **Separability Clause**

Section 13 of Ch. 92, Laws 1953 read: "If any provision of this act, or the application thereof to any person or circumstance, is held unconstitutional, the remainder of the act, or the application of such provisions to other persons or circumstances, shall not be affected thereby."

#### **Repealing Clause**

Section 14 of Ch. 92, Laws 1953 repealed all acts and parts of acts in conflict with the provisions of this act.

#### **Effective Date**

Section 15 of Ch. 92, Laws 1953 provided the act should be in effect upon its passage and approval. Approved February 25, 1953.

### **CHAPTER 10—WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS**

Section 89-1004. Term of office of water commissioner.

#### **89-1001. (7136) Appointment of water commissioners—authority, etc.**

##### **Operation and Effect**

Any act of the judge or of any water commissioner appointed by him done in violation of the plain mandate of the statute, which gives to commissioner authority to admeasure and distribute to the parties bound by the decree or de-

crees the waters to which they are entitled under the decrees, cannot be relied upon by a person to establish his claimed right to the prior use of waters by adverse possession. *Lamping v. Diehl*, 126 M 193, 246 P 2d 230, 233, 235.

**89-1004. (7139) Term of office of water commissioner.** Every water commissioner so appointed shall hold his office for such time during the irrigation season of each year as may be designated by the judge in the order making such appointment; the judge, in his discretion, shall fix the date of the commencement of such term, and may, in his discretion, or when requested in writing by at least three (3) of such persons entitled to the use of such waters, change the term for closing of the commissioner's service.

**History:** En. Sec. 4, Ch. 43, L. 1911; amd. Sec. 1, Ch. 116, L. 1921; re-en. Sec. 7139, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1955.

##### **Amendment**

The 1955 amendment substituted the words "the judge, in his discretion, shall

fix the date of the commencement of such term" for the words "provided, that the judge shall not fix the date of commencing such term until requested in writing, by at least three persons entitled to the use of such waters" which appeared after the word "appointment."

### **CHAPTER 12—IRRIGATION DISTRICTS—ORGANIZATION**

Section 89-1209. Joint operation of districts—authority.

89-1210. Board of control for joint operation—member at large—bond—vacancies.

89-1211. Powers and duties of board of control.

89-1212. Per diem and expenses of members of board of control.

89-1213. Office and records.

89-1214. Manager—employment.

89-1215. Records required to be kept—examination by state examiner.

89-1216. Costs and expenses of joint operation—apportionment.

89-1217. Custodian of funds—payments.

89-1218. Election on question of joint operation—contract.

89-1219. Withdrawal from contract—notice.

89-1220. Purpose.



**89-1204. (7169) Hearing on petition and appointment of commissioners.****References**

Florence Irr. Dist., 121 M 346, 194 P 2d

Cited or applied in In re Woodside- 241.

**89-1209. Joint operation of districts—authority.** Whenever the board of commissioners of one or more irrigation districts, established and organized by virtue of the provisions of section 89-1201, Revised Codes of Montana, 1947, shall, in their discretion, deem it advisable for the best interests of their district to operate, manage, supervise and maintain the operation of their district jointly with another irrigation district, the said commissioners are hereby authorized and empowered to enter into written contracts for the creation of a joint board of control; provided further, that where irrigation works lie partly in the state of Montana and partly in an adjacent state, the board of commissioners may contract with the district or districts in the adjacent state for the creation of a joint board of control.

**History:** En. Sec. 1, Ch. 179, L. 1959.

membership, terms of office, bond, and compensation; providing for, and deposit of funds, records and inspection; providing for withdrawal of districts, allowing for the hiring of a manager or managers; purpose of this act; and providing for an effective date.

**Title of Act**

An act relating to the creation of a board of control to operate, manage, supervise and maintain the operations of one or more irrigation districts; providing for

**89-1210. Board of control for joint operation—member at large—bond—vacancies.** The board of control shall be composed of one or more irrigation commissioners from each district involved who shall be appointed by the board of commissioners of the district which he or they represent, for a term of one year, and one member at large. The member at large shall be a land owner from one of the districts involved and shall be appointed by the said commissioner members to serve for a period of one (1) year and shall be required to give bond, the same as an irrigation district commissioner; provided further that the member at large shall not be an employee, agent, water commissioner, or servant of any of the districts involved; provided further that at no time shall the board membership be less than three (3) members. Each member of the board of control and the manager, if hired, before entering upon his duties shall give a bond to the board of control in the amount of five thousand dollars (\$5,000.00) conditioned upon the faithful performance of his duties.

Vacancies occurring during the term in the position of commissioner member shall be filled for the remainder of the unexpired term by appointment of the board of commissioners of the district involved; vacancies occurring in the position of member at large shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

**History:** En. Sec. 2, Ch. 179, L. 1959.

**89-1211. Powers and duties of board of control.** The board of control established under and by virtue of this act shall be the operating agent of the contracting districts for the operation and maintenance of irrigation and/or drainage works and the delivery of water therefrom.

The board shall make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties.

The board shall have the authority and power to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights, privileges, and immunities created by this act, or acquired in pursuance thereof, and in all courts, suits or proceedings, the said board may sue, appear and defend in person or by its attorneys, and in the name of such board of control.

The board may adopt rules and by-laws governing the calling and holding of meetings of the board, the manner of transacting business thereat, and the publishing or posting of the orders, resolutions and proceedings of the board. It shall be the duty of said board to pass or adopt by-laws, rules and regulations for the apportionment and distribution of water to the lands of the contracting districts, and for the protection and preservation of the works and other property of the said districts. All orders and resolutions shall be passed or adopted by a majority of the members of the board of control by a "yea" and "nay" vote, to be entered upon the records of the board.

Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this act.

**History:** En. Sec. 3, Ch. 179, L. 1959.

**89-1212. Per diem and expenses of members of board of control.** The members of the board of control, when sitting as a board, shall receive not to exceed fifteen (\$15.00) dollars, per day, for services, and in addition thereto, their necessary expenses in attending meetings or when otherwise engaged in board of control business.

**History:** En. Sec. 4, Ch. 179, L. 1959.

**89-1213. Office and records.** The board of control is hereby authorized and empowered to establish an office in one of the contracting districts, to hold its proceedings therein and to keep on file all necessary petitions, papers, minutes, documents or other instruments belonging to the board of control and the contracting districts.

**History:** En. Sec. 5, Ch. 179, L. 1959.

**89-1214. Manager—employment.** The board of control shall have the power to hire a manager to supervise and conduct the operations of the district or districts over which it presides, or to hire a manager for each district under its supervision, whichever it deems advisable in the premises. The said manager or managers shall perform all duties as set out for him or them by the board of control.

**History:** En. Sec. 6, Ch. 179, L. 1959.

**89-1215. Records required to be kept—examination by state examiner.** It shall be the duty of the board of control to keep, or cause to be kept, a full and complete book and record of the accounts, records, contracts,

securities, minutes of meetings and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts, in the form prescribed by the state examiner.

It is hereby made the duty of the state examiner to prescribe such forms for the use of the board of control, and to examine the same as provided by law for the examination of the affairs of county offices.

**History:** En. Sec. 7, Ch. 179, L. 1959.

**89-1216. Costs and expenses of joint operation—apportionment.** The districts entering into a contract for their joint control shall pay proportionately, to the board of control the necessary costs, expenses and charges for the general administration, maintenance and repairs on an acreage basis.

**History:** En. Sec. 8, Ch. 179, L. 1959.

**89-1217. Custodian of funds—payments.** The county treasurer of the county wherein the office of the board is established shall be the custodian of all funds made available for the use of the board and he shall pay out such funds upon the order of the board. Such orders shall be signed by the secretary or treasurer of the board of control and countersigned by the president, or in his absence, by the vice-president of the board of control. The board funds shall be kept separate and distinct from all other county funds.

The county treasurer to whom board funds are entrusted shall be liable on his bond for the safe keeping of said funds.

**History:** En. Sec. 9, Ch. 179, L. 1959.

**89-1218. Election on question of joint operation—contract.** At any time after the effective date of this act, in the event that it is deemed advisable or desirable for any irrigation districts to operate under the direction of a board of control as herein provided, the boards of commissioners of the districts, after petition requesting the same be received and filed with them, must call an election to put the question before the landowners of the districts which are petitioned to be joined. In the event a majority of the landowners of each district, as provided by section 89-1311 of this code, vote for organizing such board of control, then the commissioners of each district will be authorized and directed to enter into such contract to operate the districts in accordance with the terms of this act as provided by section 1 [89-1209] of this act. The election herein provided shall be conducted in the same manner and the same persons shall be entitled to vote thereat as provided for elections of commissioners of irrigation districts, in accordance with sections 89-1302, 89-1303, 89-1305, 89-1306, 89-1307, 89-1308, 89-1309, 89-1310, 89-1311 and 89-1313 of these codes.

Any contract previously entered into between any two or more irrigation districts, or between any such irrigation districts and the United States Bureau of Reclamation, which meets the requirements of this act, and which creates a board of control meeting all the requirements of this act is hereby declared to be a valid contract, and to create a valid board of control under this act.

**History:** En. Sec. 10, Ch. 179, L. 1959.



**89-1219. Withdrawal from contract—notice.** Any district having entered into a written contract as provided by this act, may withdraw from such contract upon submitting to the board of control, in writing, a ninety-day (90) notice of withdrawal.

**History:** En. Sec. 11, Ch. 179, L. 1959.

**89-1220. Purpose.** This act is not intended to conflict in any way with present statutes governing irrigation districts, but is for the sole purpose of making it possible for one or more irrigation districts to function jointly through a central control agency for the purpose of efficiency, simplicity and economy.

**History:** En. Sec. 12, Ch. 179, L. 1959.

**Effective Date**

Section 13 of Ch. 179, Laws 1959 pro-

vided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

# CHAPTER 13—IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS, POWERS, DUTIES AND ELECTIONS

Section 89-1311. Qualification of electors—voting rights, how determined.

**89-1311. (7184) Qualification of electors—voting rights, how determined.** At all elections held under the provisions of this act, except as herein otherwise expressly provided, the following holders of title, or evidence of title, to lands within the district, herein designated electors, shall be entitled to vote:

1. All persons having the qualifications of electors under the constitution and general and school laws of the state;
2. Guardians, executors, administrators, and trustees residing in the state;
3. Domestic corporations, by their duly organized agents.

In all elections held under this act, each elector shall be permitted to cast one vote for each forty acres of irrigable land, or major fraction thereof, owned by such elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes, or within congressional subdivisions, platted lots or blocks, except as hereinafter provided for, election precincts or district divisions, but any elector owning any less than forty acres of irrigable land shall be entitled to one vote. Until actual determination of the irrigable area under the plan of reclamation proposed is had, all land included within the boundaries of the district shall be deemed to be irrigable land for election purposes.

Where land is owned by co-owners, said owners may designate one of their number, or an agent, to cast the vote for said owners, and one vote only for each forty acres of irrigable land, or major fraction thereof, shall be cast by said co-owner or agent. Where land is under contract of sale to a purchaser residing within the state, such purchaser may vote on behalf of the owner of said land. When voting, the agent of a corporation, or of co-owners, or the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district, or with the election officials, a

written instrument of his authority, executed and acknowledged by the proper officers of said corporation, or by said co-owners, or by the owner of such land under contract of sale, as the case may be, and thereupon such agent or co-owner, or purchaser, as the case may be, shall be deemed an elector within the meaning of this act. Where the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of five per cent (5%) or more of the total acreage of the district, each elector shall be permitted to cast one vote for each one acre of irrigable land or major fraction thereof owned by such elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for the assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than one acre of irrigable land within said district shall be entitled to one vote. The balloting shall take place in the following manner: Ten (10) votes or less, separate ballots will be used; more than ten (10) votes, the elector shall vote in blocks of ten using one ballot for each ten votes and separate ballots for odd votes over multiples of ten. The election shall otherwise conform with the provisions set out in section 89-1308 of this chapter. It shall be the duty of the chairman of the commissioners, or such commissioner as he may delegate, to determine before each election whether the provisions of this paragraph are in force or whether the provisions heretofore set out shall apply.

**History:** En. Sec. 19, Ch. 146, L. 1909; re-en. Sec. 7184, R.C.M. 1921; amd. Sec. 6, Ch. 157, L. 1923; amd. Sec. 1, Ch. 164, L. 1953.

**Repealing Clause**

Section 2 of Ch. 164, Laws 1953 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1953 amendment inserted the words "except as hereinafter provided for" in the second paragraph and added the last four sentences of the last paragraph.

**Effective Date**

Section 3 of Ch. 164, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

CHAPTER 17—IRRIGATION DISTRICTS—BONDS

Section 89-1705. Details relating to bonds.

**89-1705. (7212) Details relating to bonds.**

(1). \* \* \* [Same as parent volume.]

(2). \* \* \* [Same as parent volume.]

(3) All bonds issued hereunder shall be signed by the president and attested by the secretary of the board under the corporate seal of the district, and each of the interest coupons to be attached to said bonds shall be executed by the signatures of said president and secretary. Each bond shall be signed, and each interest coupon shall be executed, by the president and secretary of the board of commissioners who may be in office at the date of said bond and coupons, or at any time thereafter prior to the delivery of said bond to the purchaser thereof from the district.

(4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 42, Ch. 146, L. 1909; Sec. 7212, R. C. M. 1921; amd. Sec. 8, Ch. amd. Sec. 1, Ch. 17, Ex. L. 1919; re-en. 157, L. 1923; amd. Sec. 12, Ch. 260, L. 1959.

**Amendment**

The 1959 amendment in subd. (3) deleted the words "original or engraved or

lithographed facsimile" which appeared after the words "bonds shall be executed by the."

**89-1707. (7214) Sale of bonds—cancellation of unused bonds.****History Correction**

7214, R. C. M. 1921; amd. Sec. 9, Ch. 157, L. 1923.

**History:** En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec.

**CHAPTER 18—IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS****89-1803. (7234) All irrigable lands chargeable alike.**

Discrimination between property within and that outside governmental districts as to rates. 4 ALR 2d 598, 610.

**89-1804. (7235) Annual tax levy—apportionment when tracts divided.**

**Special Assessment by Irrigation District**

it, later attempted in 1949, was barred by subd. 5 of this section. Vail v. Custer County, 132 M 205, 315 P 2d 993, 1000.

Assessment for 1921 through 1926 and the collection of water charges due under

**CHAPTER 21—IRRIGATION DISTRICTS—APPEALS—MISCELLANEOUS PROVISIONS**

Section 89-2122. Lien of amounts to be paid the United States—special tax.

**89-2122. (7264.12) Lien of amounts to be paid the United States—special tax.** All amounts to be paid to the United States under any contract between the district and the United States made hereunder shall be a general obligation of the district and said amounts to be paid to the United States shall be a lien upon the irrigation system of the district. All lands now within the district or hereafter embraced within the district shall be subject to a special tax or assessment for the payment of all amounts to be paid to the United States under any such contract between the district and the United States, and said special tax or assessment shall constitute a first and prior lien on the land against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

**History:** En. Sec. 3, Ch. 24, L. 1931; amd. Sec. 1, Ch. 83, L. 1955.

which appeared after the words "United States shall"; began a new sentence with the word "all" and added the words "lands now within the district or hereafter embraced within the district" immediately following.

**Amendment**

The 1955 amendment in the first sentence substituted the words "general obligation of the district" for "lien upon all the lands now within the district or hereafter embraced within the district, and for the benefit of which said contract between the district and the United States was made" and deleted the word "also"

**Repealing Clause**

Section 2 of Ch. 83, Laws 1955 repealed all acts or parts of acts in conflict therewith.

**CHAPTER 25—DRAINAGE DISTRICTS—BONDS—REFUNDING INDEBTEDNESS**

Section 89-2501. Borrowing money—procedure to issue notes or bonds.

**89-2501. (7343) Borrowing money—procedure to issue notes or bonds.**  
(1). \* \* \* [Same as parent volume.]



(2) Before the issuance of said notes or bonds, the commissioners shall pass a resolution providing for the issuance of such notes or bonds, which said resolution shall fix the rate of interest which said notes or bonds shall bear, not exceeding six per centum per annum, payable semi-annually, the time of payment and, if redeemable before maturity, the date thereof, and shall prescribe the denominations, not exceeding one thousand dollars, and form thereof, and may provide that both the principal and interest of said notes and bonds shall be payable at some convenient banking house, or trust company's office, to be named in said notes or bonds; such notes or bonds, and the coupons attached thereto, shall bear the signatures of the president and the secretary of the drainage district; and the corporate seal of the drainage district shall be affixed to each of the notes or bonds.

(3). \* \* \* [Same as parent volume.]

(4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R. C. M. 1921; amd. Sec. 13, Ch. 260, L. 1959.

#### Amendment

The 1959 amendment in subd. (2) substituted "and the coupons attached thereto, shall bear the signatures of the president and the secretary of the drainage district" for the words "shall bear the

signature of the president of the drainage district and shall be signed by the secretary of such drainage district, and the coupons attached to the notes or bonds shall be signed by the president and secretary; provided, the facsimile signatures of the president and secretary may be affixed to the coupons only when so recited in the notes or bonds."

## CHAPTER 27—DRAINAGE DISTRICTS—CONTINUATION AND ALTERATION OF EXISTING DISTRICTS

Section 89-2702. Alterations or additions to system—petition required, contents of.  
89-2704. Objections—dismissal of petition—procedure at hearing.

**89-2702. (7364.3) Alterations or additions to system—petition required, contents of.** Whenever, in the judgment of the commissioners of any drain district or drainage district, it is necessary or will be beneficial to such district to make any alteration and/or any addition to the drainage system of such district, they shall file a petition with the clerk of the court having jurisdiction of such district, in which shall be stated the proposed alteration of and/or the proposed addition to the drainage system of said district, the necessity therefor and the probable cost of making such alteration and/or addition. Whenever such commissioners shall fail or refuse to file such petition or, in event any landowners desire to file such petition, such petition may be filed by such landowners, provided the same be signed by the owners of at least forty per centum (40%) in area of the lands in said district.

**History:** En. as Sec. 7364-C by Sec. 2, Ch. 97, L. 1931; amd. Sec. 1, Ch. 70, L. 1953.

#### Amendment

The 1953 amendment added the last sentence to this section.

**89-2704. (7364.5) Objections—dismissal of petition—procedure at hearing.** Any such landowner or corporation may at any time prior to five (5) days before the date fixed for such hearing file his or its objections to such petition. A copy of such objections shall be delivered to the attorney for said commissioners, if they have an attorney of record, or

to the chairman of the board of commissioners of said district, if there be no such attorney of record, prior to filing the original thereof with the clerk of said court. If objections are made and filed by the owners of at least seventy-five per centum (75%), in area of the lands in said district, said petition shall be dismissed and no further proceedings had thereon. If the owners of less than seventy-five per centum (75%) in area of the lands in said district object to such petition, then, on the date fixed for such hearing, or upon any day to which such hearing may be adjourned, the court having jurisdiction will hear testimony in support of said petition and in opposition thereto, and after such hearing shall determine whether the proposed alteration and/or addition is necessary, whether it will be beneficial to said district and improve the drainage system thereof, and either approve or deny such petition or modify and change the alteration and/or addition proposed. If the court shall approve such petition, or modify and change the alteration and/or addition proposed, the court shall by order, direct said commissioners to proceed with said work with all convenient speed. So far as possible, such hearing shall be conducted as other hearings and trials in the district courts of the state of Montana, and the laws of the state of Montana with reference to hearings and trials, so far as applicable, shall govern in the conduct of such hearings.

**History:** En. as Sec. 7364-E by Sec. 2, Ch. 97, L. 1931; amd. Sec. 2, Ch. 70, L. 1953.

in the fourth sentence following the words "alteration and/or addition" and added the next to the last sentence.

#### **Amendment**

The 1953 amendment raised from 50% to 75% the area of land of which the owners must object before the petition may be dismissed, and from 50% to 75% in the provision which allows a hearing on the proposed alteration and/or addition when the owners of less than 75% of the land area object; substituted the words "is" for "are" and "it" for "they"

#### **Repealing Clause**

Section 3 of Ch. 70, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 70, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 25, 1953.

### **CHAPTER 28—DRAINAGE DISTRICTS—MISCELLANEOUS PROVISIONS**

- Section 89-2821. Additional powers—purpose.  
 89-2822. Additional powers enumerated.  
 89-2823. Petition for additional powers by present drainage district.  
 89-2824. Areas not within present districts—organization.  
 89-2825. Legislative purpose—liberal interpretation—cooperation—exercise of additional powers, proviso.

**89-2821. Additional powers—purpose.** The purpose of this act is to confer certain additional powers on drainage districts already created or to be created under the laws of the state of Montana for the purposes of cooperating with the government of the United States and landowners in flood prevention and the conservation, development, utilization and disposal of water for the further development of the economy of this state and for the promotion of the public health and welfare.

**History:** En. Sec. 1, Ch. 3, L. 1957.

#### **Title of Act**

An act to confer additional powers on already existing drainage districts for the

purposes of flood prevention and the conservation, development, utilization and disposal of water; to provide for the creation of drainage districts for the purposes set forth in this act; and for related purposes.

**89-2822. Additional powers enumerated.** To the end that soil and water conservation measures may be improved, flood prevention and drainage programs strengthened, and the land and water economy of the state stabilized, the following additional powers are conferred upon presently existing drainage districts or new districts as created and established under sections 89-2201 through 89-2820 of the Revised Codes of Montana, 1947, and laws amendatory thereof and supplementary thereto:

(1) To carry out necessary measures for the prevention of floodwater and sediment damages and for the conservation, development, utilization and disposal of water; and to adopt necessary regulations, policies and procedures to accomplish these ends, subject to the approval of the district court and on proper notice to interested parties as is provided for in the general statutes pertaining to drainage districts.

(2) To cooperate and enter into agreements with, and to receive financial and other assistance from state agencies and political subdivisions of the state, other organizations created under state laws, and the government of the United States and agencies thereof, to carry out the purposes of this act; to enter into agreements with and to accept contributions from private landowners for the purposes of this act.

(3) To construct, operate, and maintain such works of improvement, including structures and related measures, as are needed to carry out their broadened purposes as set forth herein, subject to the approval of the district court and on proper notice to interested parties as set forth in the drainage district statutes.

(4) To acquire lands, easements, and rights-of-way for sites for structures and for the flowage or impoundment of waters, such acquisitions for such purposes to be accomplished in the same manner and through the same powers and procedures as provided for under the statutes presently pertaining to drainage districts.

(5) To enlarge their boundaries to permit the construction of additional needed works of improvement, or to construct additional needed works of improvement outside their boundaries, subject to approval of the district court and on proper notice to interested parties in the manner set forth in the drainage district statutes.

(6) To make assessments and issue bonds for carrying out the purposes of this act and for construction, maintaining and operating any structures or improvements established as provided herein, such assessments and bond issues to be made in the same manner and through the same procedures as under the statutes presently pertaining to drainage districts including the right to extend annual installments for repayment of construction costs over a period of not more than fifty years and subject to the approval of the district court in the same manner and on the same notice to the interested parties as in the first instance of approving assessments, bond issues, and benefits.

**History:** En. Sec. 2, Ch. 3, L. 1957.



**89-2823. Petition for additional powers by present drainage district.** Before the additional powers granted by this act shall become applicable to any presently existing drainage district in this state, the commissioners of such district shall file a petition in the district court requesting such additional powers as set forth herein, and proper notice shall be given to interested landowners in the same manner as in the first instance of creation of the district, and proceedings shall be conducted insofar as possible in accordance with the procedures set forth for determining whether or not the district shall be created in the first instance, and the district court shall render its decree or order accordingly.

**History:** En. Sec. 3, Ch. 3, L. 1957.

**89-2824. Areas not within present districts—organization.** In areas not presently within the boundaries of an existing drainage district the landowners may proceed to organize a drainage district for carrying out the purposes of this act, and such organization of such district may be carried out for said purposes according to the procedure for organization of such districts set forth in the Revised Codes of Montana, 1947, and after organization such districts shall have all the powers vested by law in such districts.

**History:** En. Sec. 4, Ch. 3, L. 1957.

**89-2825. Legislative purpose—liberal interpretation—cooperation—exercise of additional powers, proviso.** The purpose of this act is to enable existing drainage districts or newly created drainage districts as provided herein to enter into cooperative agreements and programs to carry out the purposes of Public Law 566, 83rd Congress of the United States, or other laws of the National Congress pertaining to flood prevention and the conservation, development, utilization and disposal of water. This act is to be given a liberal construction to the end that these purposes may be carried out, and to this end all political subdivisions of the state of Montana, all agencies and departments of the state government, and all soil conservation districts are authorized to cooperate with, expend funds for, and enter into agreements with drainage districts and any agencies of the United States government for the purpose of carrying out the provisions of this act and said Public Law 566, 83rd Congress of the United States or other laws of the National Congress pertaining to flood prevention and the conservation, development, utilization and disposal of water.

Provided, however, none of the additional powers granted by this act shall be exercised except for the purpose of participating in projects or programs authorized under Public Law 566, 83rd Congress of the United States, or other laws of the National Congress pertaining to flood prevention and the conservation, development, utilization and disposal of water.

**History:** En. Sec. 5, Ch. 3, L. 1957.

#### **Effective Date**

Section 7 of Ch. 3, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 2, 1957.

#### **Separability Clause**

Section 6 of Ch. 3, Laws 1957 read "If any part, or parts of this act shall be declared by any court of competent jurisdiction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

## CHAPTER 30—SAGE CREEK BASIN

Section 89-3001. Authority for governor to assent to agreement between United States and Canada regarding waters of Sage Creek Basin.

89-3002. Substance of agreement.

**89-3001. Authority for governor to assent to agreement between United States and Canada regarding waters of Sage Creek Basin.** The governor of Montana is hereby authorized and empowered to assent, on behalf of the state of Montana, to an agreement to be entered into between the government of the United States of America and the government of Canada for, and on behalf of, the state of Montana and its citizens, and the Province of Alberta and its citizens, concerning a division of the waters of the Sage Creek Basin, the said basin being the watershed of an international stream; and, if such agreement be entered into, and such assent given, the governor of Montana is hereby authorized and empowered to take such action as may be necessary to carry the agreement into effect.

**History:** En. Sec. 1, Ch. 23, L. 1957.

**Title of Act**

An act authorizing the governor of Montana to assent on behalf of the state of Montana to an agreement to be entered into between the government of the United States of America and the government of Canada for, and on behalf of, the state of Montana and its citizens, and the Province

of Alberta and its citizens, for a division between said state and said province of the waters of the Sage Creek Basin; prescribing the formula to be used for effecting the division of the subject waters; and waiving certain rights under the boundary waters' treaty signed at Washington on January 11, 1909; and providing an effective date.

**89-3002. Substance of agreement.** The said agreement shall in substance provide for:

1. Construction, by the Prairie Farm Rehabilitation Administration or other agency of the government of Canada, of a reservoir in Canada at Elbow Coulee to provide capacity for approximately 7,500 acre-feet of live storage;

2. Construction, by the same agency, of a "Supply Canal to the United States" on the west side of Sage Creek to carry all of the stored water apportioned to the Montana ranchers from a point in Sage Creek below the reservoir to the point where Sage Creek crosses the international boundary. Final location of this canal will be recommended by the Canadian authorities concerned, after completion of a survey by the Prairie Farm Rehabilitation Administration;

3. Formation of a water storage society or other organization of the Canadian ranchers appropriate under Alberta laws which will be responsible for:

(a) maintenance and operation of the reservoir and of the diversion works at the head of the supply canal to the United States;

(b) apportionment of the impounded water as between the Alberta ranchers and the Montana ranchers in accordance with the formula outlined hereunder;

(c) diversion of the United States' share of the impounded water to the supply canal to the United States referred to in paragraph 2 above;

(d) provision of suitable storage apportionment and diversion records to the representative of the Montana ranchers and to the board referred to in paragraph 5 below;

(e) maintenance of Sage Creek channel between the reservoir and the point of diversion to the supply canal to the United States in a condition satisfactory to the board referred to in paragraph 5 below.

4. The water storage society or other organization mentioned in paragraph 3 to cooperate with the Montana ranchers and, as and when requested by a representative of the Montana ranchers, to release and divert to the supply canal to the United States all or part of the Montana ranchers' share of the water then impounded in the reservoir;

5. Inspection of the reservoir, channel and diversion works and the records of the storage society by an international board created by the International Joint Commission, to verify compliance with the terms of the agreement for apportionment of the stored water; said board to recommend subsequently any adjustment which may be appropriate;

6. Maintenance of the supply canal to the United States in a condition satisfactory to the board referred to in paragraph 5 above, to be the responsibility of the Montana ranchers, who will be permitted appropriate access to the canal for this purpose at all reasonable times;

7. Apportionment of water shall apply to water remaining in the reservoir at the commencement of the water year, together with the season run off impounded in the reservoir, regardless of whether the run off occurs during only on period of days or weeks or during two or more such periods. Such water shall be apportioned to the Alberta ranchers and the Montana ranchers in the following manner:

(a) If the amount of water thus available in the reservoir for apportionment during the water year is 3,750 acre-feet or less, one third thereof shall be apportioned to the Montana ranchers and two thirds to the Alberta ranchers;

(b) If the amount is more than 3,750 acre-feet but not more than 5,000 acre-feet, 1,250 acre-feet thereof shall be apportioned to the Montana ranchers and the remainder to the Alberta ranchers;

(c) If the amount is more than 5,000 acre-feet one fourth thereof shall be apportioned to the Montana ranchers and three fourths to the Alberta ranchers; provided, that if in any year the amount is more than 7,500 acre-feet, the water in excess of 7,500 acre-feet shall be made available to the Alberta ranchers if they can use it.

If the capacity of the reservoir for live storage should prove to be less than 7,500 acre-feet, the amounts of water stated above will be reduced proportionately.

8. Measurement of diversions to be made at the point of diversion from Sage Creek to the supply canal to the United States;

9. Reservoir losses, defined as "changes in reservoir storage which are unexplained by inflows and deliveries," and physical losses in Sage Creek channel between the reservoir and the point of diversion to the supply canal to the United States, to be shared in the same proportions as the water impounded in the reservoir;

10. All waters in Sage Creek Basin in Alberta, other than the Montana ranchers' share of water impounded in the reservoir calculated in accordance with the formula outlined in paragraph 7 above, to be available for use in Alberta;



11. The flow of water across the international boundary in the Sage Creek Basin not be obstructed in Montana in a manner which causes or is likely to cause damage in Alberta;

12. In consideration of the apportionments of water to be made pursuant to the aforementioned arrangements, the state of Montana and the Montana ranchers to waive any and all rights they might otherwise assert, under Article II of the Boundary Waters' Treaty of 1909, respecting the waters of the Sage Creek Basin.

**History:** En. Sec. 2, Ch. 23, L. 1957.

the act should be in effect from and after its passage and approval. Approved February 19, 1957.

**Effective Date**

Section 3 of Ch. 23, Laws 1957 provided

### CHAPTER 31—WELLS

Section 89-3101. Drilling or digging of wells—filing report in county—contents.

89-3102. Report to be in addition to other reports required.

89-3103. County to transmit copies to bureau of mines and geology and state engineer.

**89-3101. Drilling or digging of wells—filing report in county—contents.** Every person, firm, or corporation who shall drill or dig, or shall cause to be drilled or dug, a water well, of any type whatsoever, within the state of Montana shall, within sixty (60) days after the completion of such well, file as a permanent record in the office of the clerk and recorder of the county wherein the well is located, on a form to be furnished by the state bureau of mines and geology, as hereinafter in this act provided, the following information: (a) the name and address of the owner of the land where the well is located, (b) the date the drilling commenced and the date the well was completed, (c) the name and address of the driller of the well, (d) the approximate location of the well by legal description, (e) the kind and size of the well and other works or excavation in connection therewith, (f) the capacity of the well in gallons per minute or cubic feet per second, by pumping or by natural flow, (g) the proposed use of the water from the well, (h) the approximate surface elevation at the wellhead, (i) the casing record of the well, (j) the drilling log showing the character and thickness of all formations penetrated, (k) the depth to which the well is drilled, and (l) the depth to the water horizon and the height to which water will rise in the well.

**History:** En. Sec. 1, Ch. 58, L. 1957.

**Title of Act**

An act to require all persons, firms, and corporations drilling or digging water wells or causing water wells to be drilled or dug in the state of Montana to file with the clerk and recorder of the county in which

such well is located information as to location, size, type, depth, water level and other information concerning such well and requiring that such information be filed with the state bureau of mines and geology and the state engineer; containing a repealing clause.

**89-3102. Report to be in addition to other reports required.** The report and information required to be filed by section 1 [89-3101] of this act shall be in addition to all other reports and information which the drillers of water wells in the state of Montana are required by law to file with agencies of the state of Montana.

**History:** En. Sec. 2, Ch. 58, L. 1957.

**89-3103. County to transmit copies to bureau of mines and geology and state engineer.** The report and information required to be filed by section 1 [89-3101] of this act shall be filed on forms prescribed by the state bureau of mines and geology and furnished by the state bureau of mines and geology to the clerk and recorder of the various counties, and such report and information shall be filed in triplicate. The original of such report and information shall be kept as a permanent record of the office of the clerk and recorder of the county wherein the well is located. The clerk and recorder of such county shall transmit one copy of such report and information to the state bureau of mines and geology and one copy to the state engineer.

**History:** En. Sec. 3, Ch. 58, L. 1957.

all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 4 of Ch. 58, Laws 1957 repealed

## TITLE 90—WEIGHTS—MEASURES AND GRADES—TIME—MONEY

- Chapter 1. Standard weights and measures—state sealer of weights and measures, 90-101, 90-125, 90-126, 90-129, 90-131, 90-132, 90-136, 90-137, 90-140, 90-146, 90-147.
2. Apples, grades and boxes, 90-201.
  3. Bread—standard weight and loaf, 90-301, 90-301.1.

### CHAPTER 1—STANDARD WEIGHTS AND MEASURES—STATE SEALER OF WEIGHTS AND MEASURES

- Section 90-101. What are standards.
- 90-125. Duty as to visitation and inspection—certificate—acts forbidden.
- 90-126. Penalty for using false weights—seals.
- 90-129. Authority to inspect weighing and measuring devices and penalty for tampering with seal.
- 90-131. Inspection of track scales for weighing in carload lots—scale platforms—penalty for short weights.
- 90-132. Weight of commodities to be indicated on containers—penalties.
- 90-136. Prohibition of use of weights pending adjustment.
- 90-137. Condemnation of weights and measures not standard.
- 90-140. Regulation of milk containers—complaints.
- 90-146. Penalty for obstructing sealer.
- 90-147. State sealer to promulgate rules.

**90-101. (4212) What are standards.** The weights and measures accepted and used by the bureau of standards of the United States, except as hereinafter provided, are the lawful standard weights and measures of the state. The state sealer of weights and measures may establish tolerances and specifications for commercial weighing and measuring apparatus similar to the tolerances and specifications recommended by such bureau of standards. Any person violating such standards, tolerances, or specifications shall be guilty of a misdemeanor.

**History:** En. Sec. 3120, Pol. C. 1895; re-en. Sec. 2009, Rev. C. 1907; re-en. Sec. 4212, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1945; amd. Sec. 1, Ch. 143, L. 1951.

words "United States" in the first sentence and substituted the word "and" for "in" following "establish tolerances" in the second sentence.

#### Amendment

The 1951 amendment omitted the words "at the present time" which followed the

#### Cross-Reference

Oleomargarine, weights and packages, secs. 27-511, 27-513.

**90-125. (4238) Duty as to visitation and inspection—certificate—acts forbidden.** Said state sealer of weights and measures, or his deputies, shall visit the various counties, cities and towns in the state, and in the performance of his duties, he, or his deputies, shall inspect weights, measures, scales and weighing devices which are used for buying or selling goods, wares, merchandise, or other commodities, and for public weighing, and shall test or calibrate weights and measures, weighing devices or apparatus used as test standards in the state. He, or his deputies, shall, at least once a year, test all scales, weights and measures used in checking the receipts or disbursements of supplies of every state institution, and shall report in writing his findings to the executive officer of the institution concerned. The state sealer of weights and measures shall prepare a certificate of suitable size which shall be issued to the owner or person in charge after inspection, and a proper seal to be attached or affixed to all



scales and weighing devices, measures or measuring devices so tested. Said certificates and seals shall bear the signature of the state sealer of weights and measures, or shall be signed by a deputy sealer of weights and measures. Such certificates shall be numbered in consecutive order, and shall show the date of issuance. It shall be unlawful for any person to deface, mutilate, obscure, conceal, efface, cancel or remove any seal, stamp or mark provided for by this act, or cause or permit the same to be done without the written consent of the state sealer of weights and measures or his deputies.

**History:** En. Sec. 4, Ch. 34, L. 1911; amd. Sec. 4, Ch. 83, L. 1913; re-en. Sec. 4238, R. C. M. 1921; amd. Sec. 6, Ch. 146, L. 1939; amd. Sec. 3, Ch. 110, L. 1945; amd. Sec. 1, Ch. 174, L. 1949; amd. Sec. 2, Ch. 143, L. 1951.

#### Compiler's Note

Chapter 143 of Laws 1951 in amending this section made no reference to the 1949 amendment.

#### Amendments

The 1949 amendment added a first sentence which read, "The state sealer shall prescribe and adopt such rules and regulations for the installation of heavy duty scales as he may deem necessary to carry out the provisions of this chapter, and he may change or modify or amend any or all rules whenever deemed necessary."

The 1951 amendment omitted the sentence added by the 1949 amendment, substituted "weights, measures, scales and weighing devices" for "weights and meas-

ures and balances" in the first sentence, substituted "scales and weighing devices" for "weights and measures or measuring devices" in the third sentence, omitted the words "any such certificate" following "remove" in the last sentence, omitted the words "or to violate any of the provisions of this act" following "same to be done" and substituted "sealer of weights and measures or his deputies" for "sealer of weights or that of the deputy who inspected the weighing device" at the end of the section.

#### Repealing Clause

Section 2 of Ch. 174, L. 1949 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 174, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

**90-126. (4240) Penalty for using false weights—seals.** From and after the passage and approval of this act it shall be unlawful for any person or persons, firm, or co-partnership, corporation, or association of persons engaged in the trade of buying or selling, purchasing or disposing of, or dealing in any merchandise or commodities to any person, or persons in the state of Montana, to sell or purchase by weight or by measure, without first having had the weights and measures, scales or measuring devices used by them, or in their possession, for the purpose of determining the amount or quantity of any article or articles of merchandise, tested and a seal of approval attached thereto by the state sealer of weights and measures, or by his deputies. Such seal shall be attached or placed in a conspicuous place upon such weighing or measuring device. Any person or persons making use of weighing or measuring devices subject to this act must report to the sealer of weights and measures or his deputies, in writing, the number and location of said weighing or measuring device and must promptly report the installation of any new weighing or measuring device. Any person or persons using any weight or measure, or scale or other measuring device after the passage and approval of this act, or annually thereafter, which has not been tested as provided by this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and

will be subject to a fine of not less than ten dollars (\$10.00) and no more than one hundred dollars (\$100.00).

**History:** En. Sec. 6, Ch. 34, L. 1911; amd. Sec. 6, Ch. 83, L. 1913; re-en. Sec. 4240, R. C. M. 1921; amd. Sec. 7, Ch. 146, L. 1939; amd. Sec. 3, Ch. 143, L. 1951; amd. Sec. 1, Ch. 157, L. 1957.

The 1957 amendment inserted the words "or measuring" each time they appear in the third sentence and added the penalty provisions to the end of the section.

#### Amendments

The 1951 amendment inserted the words "of approval" following "seal" near the end of the first sentence.

#### Repealing Clause

Section 2 of Ch. 157, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**90-129. (4243) Authority to inspect weighing and measuring devices and penalty for tampering with seal.** The state sealer of weights and measures, or his deputies shall have power to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of any kind, instruments or mechanical devices for measurement, and the tools, appliances, or accessories connected with any and all of such instruments or measurements, used, kept for use, sold, offered for sale, or kept for sale, or employed within the state by a proprietor, agent, lessee or employee in determining the size, quantity, extent, area or measurement of quantities, things, produce, articles for distribution or consumption, offered or submitted by such persons for sale, hire, or award. Provided also, that the state sealer of weights and measures, or his deputies, shall at least once a year and as often as may be deemed necessary, try and prove all computing scales and other devices having a device for indicating or registering the price as well as the weight of the commodity offered for sale. Computing devices, which may be used by any person at any place within this state, shall be tested as to the correctness of both weight and arithmetical values indicated by them.

The state sealer of weights and measures, or his deputies shall have in addition to the above mentioned powers, the power to inspect and classify all meters, measuring, gauging or testing devices and apparatus used in connection with the wholesale and retail distribution of petroleum and petroleum products, and may prescribe suitable standards of accuracy for such meters and measuring devices, conformable to the standards fixed by the United States bureau of standards for such devices.

It shall be unlawful to remove any state seal or rejection notice placed on the adjustment of any gasoline pump, meter, or petroleum measuring device and scale such as, but not limited to, retail pumps, wholesale meters, tank markers and measuring cans, except by repairmen certified by the state sealer of weights and measures, or where they have received a temporary permit from the department of agriculture. In prosecutions for offenses under this section, proof of the removal of any state seal or rejection notice on any of the measuring devices owned or used by the defendant charged with the commission of said offense shall be prima facie evidence of the guilt of the defendant. Any person found guilty of violating this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).

**History:** En. Sec. 9, Ch. 34, L. 1911; amd. Sec. 9, Ch. 83, L. 1913; re-en. Sec. 4243, R. C. M. 1921; amd. Sec. 10, Ch. 146, L. 1939; amd. Sec. 2, Ch. 158, L. 1953; amd. Sec. 1, Ch. 131, L. 1955; amd. Sec. 1, Ch. 89, L. 1957; amd. Sec. 1, Ch. 78, L. 1959.

#### Compiler's Note

Section 2 of Ch. 131, Laws 1955 is compiled as section 60-201.

#### Amendments

The 1953 amendment added the second and third paragraphs.

The 1955 amendment added the third paragraph above and deleted a former third paragraph which read "It shall be the duty of each person, firm, partnership or corporation owning or operating any of the above enumerated measuring devices used in the wholesale or retail distribution of petroleum and petroleum products to pay to the state sealer of weights and

measures, or his deputies, at time of inspection the following inspection fee: Petroleum pumps (filling stations, etc.) one dollar (\$1.00): vehicle tank meters and bulk meters two and one-half inch (2½") and under five dollars (\$5.00): petroleum bulk meters over two and one-half inch (2½") eight dollars (\$8.00)."

The 1957 amendment in the third paragraph inserted the words "or where they have received a temporary permit from the department of agriculture" and increased the minimum and maximum fine from \$10 and \$25 to \$25 and \$100.

The 1959 amendment added the next to the last sentence in this section.

#### Repealing Clauses

Section 1 of Ch. 158, Laws 1953 specifically repealed sec. 60-218.

Section 2 of Ch. 89, Laws 1957 and sec. 2 of Ch. 78, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**90-131. (4245) Inspection of track scales for weighing in carload lots—scale platforms—penalty for short weights.** (a) All track scales used for the purpose of weighing freight in carload lots within the state shall be under the control and direction and jurisdiction of the state sealer of weights and measures, and subject to inspection by him, or his deputies.

(b) The state sealer of weights and measures, or his deputies, shall have power either on their own motion or on complaint being made, to determine whether any petroleum measuring device or scales are defective or inefficient, or whether the time, manner, or method of using same is unreasonable, ineffective, or unjust, and shall have power to condemn any petroleum measuring device or scales found to be defective or inefficient, and prohibit the use of the same while in that condition, and to render such decision and to make such order, rule, or regulation as may be deemed necessary or advisable. No scale platform shall be allowed to extend over the manufacturer's specifications.

(c) Any person or persons who shall sell, or direct or permit any person or persons in his or their employ to sell any commodity or article of merchandise and make or give any false or short weight or measure, or any person or persons owning or keeping, or having charge of any scales or steelyards for the purpose of weighing livestock, hay, grain, coal, or other articles, who shall report any false or untrue weight, whereby any other person or persons may be defrauded or injured, shall be deemed guilty of a misdemeanor, and shall be answerable to the party defrauded or injured in double damages.

**History:** En. Sec. 11, Ch. 83, L. 1913; re-en. Sec. 4245, R. C. M. 1921; amd. Sec. 12, Ch. 146, L. 1939; amd. Sec. 4, Ch. 110, L. 1945; amd. Sec. 1, Ch. 84, L. 1957.

#### Amendment

The 1957 amendment inserted the words

"petroleum measuring device or" both times they appear in subd. (b).

#### Repealing Clause

Section 2 of Ch. 84, Laws 1957 repealed all acts or parts of acts in conflict therewith.



**90-132. (4246) Weight of commodities to be indicated on containers—penalties.** It shall be unlawful for any person or persons, association, or corporation, to sell or offer for sale in this state any commodity or article of merchandise in a package or container, without having such package or container labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure, or numerical count of its contents, designated, where not otherwise provided, by lettering of at least one-ninth (1/9) inch in height (8 point type). Provided, that nothing in this section shall prevent the sale of a commodity within the provisions of this act when such sale is made from bulk and the quantity is weighed, measured, or counted for the immediate purpose of such sale; provided, further, that nothing in this section shall apply to commodities or articles of merchandise, except milk and cream, offered for sale or sold in packages or containers at a price of ten cents (10c) or less per such package or to commodities or articles of merchandise in packages or containers which are sold by the aggregate net weight of the contents thereof.

1. It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure, or numerical count, except where the parties otherwise agree. Contracts for work done, or anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid. It shall be unlawful for any person to sell solid substances by liquid measure.

2. It shall be unlawful for any person, in buying or selling any commodity or article of merchandise, to make or give false or short weight or measure, or to sell or offer for sale any commodity or article of merchandise less in weight or measure than he represents, or to use a weight, measure, balance or measuring device that is false and does not conform to the authorized standard for determining the quantity of any commodity or article of merchandise, or to have a weight, measure, balance, or measuring device adjusted for the purpose of giving false or short weight or measure, or to use in buying or selling of any commodity or article of merchandise a computing scale or device indicating the weight and price of such commodity or article of merchandise, upon which scale or device the graduations or indications are falsely or inaccurately placed, either as to weight or price, or to use any computing scale having a horizontal registering bar with a barrel computing device, unless such scale is adjusted to register the correct weight from all angles of vision, and the view on the customer's side shall never be, in any manner, obstructed. The selling and delivering of any commodity or article of merchandise shall be prima facie evidence of the representation on the part of the vendor that the quantity sold and delivered was the quantity bought by the vendee. There shall be taken into consideration the usual and ordinary leakage, evaporation, or waste that there may be from the time a package or container is filled by a vendor until he sells the same. A slight variation from the

stated weight, measure or quantity for individual packages not to exceed three percent (3%) is permissible; provided, that the variation is as often above as below the weight, measure or quantity stated.

3. Any person, who by himself, or his employee or as a proprietor or manager, shall refuse to exhibit any article, commodity or the container of any commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the state sealer of weights and measures, or his deputies, for the purpose of allowing the same to be tested and proved as to the quantity contained therein as in this act provided, shall be guilty of a misdemeanor.

4. The term container used in this act is hereby defined to be any receptacle or carton into which a commodity is packed, or any wrappings with which any commodity is wrapped or put up for sale, or to be offered or exposed for sale. No containers, boxes, or baskets wherein food products or other commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed as to facilitate the perpetration of deception or fraud. The state sealer of weights and measures, or his deputies, may seize any container which facilitates the perpetration of deception or fraud. By order of a court having jurisdiction the containers seized shall be condemned and destroyed or released upon such conditions as the court in its discretion may impose, to insure against their use in violation of this section.

5. There are hereby established the following standard net weights for all berry containers, or hallocks in which strawberries, blackberries, currants, gooseberries, or any other berries, except red or black raspberries, are sold or offered for sale in this state:

(a) Pint hallocks or containers shall be 33.6 cubic inches in capacity and the contents thereof shall have a net minimum weight of twelve (12) ounces.

(b) Quart hallocks or containers shall be 67.2 cubic inches in capacity and contents thereof shall have a net minimum weight of twenty-four (24) ounces. Red or black raspberries shall be marketed in either pint hallocks or one-half ( $\frac{1}{2}$ ) pint containers or hallocks of 16.8 cubic inches capacity and minimum weight of eight (8) ounces. The sale of, or having in possession for sale, any strawberries, red or black raspberries, blackberries, currants, gooseberries or any other berries in containers or hallocks not complying with the provisions of this act shall be a misdemeanor punishable, upon conviction, by a fine of not less than ten dollars (\$10.00), nor more than twenty-five dollars (\$25.00).

**History:** En. Sec. 12, Ch. 83, L. 1913; re-en. Sec. 4246, R. C. M. 1921; amd. Sec. 13, Ch. 146, L. 1939; amd. Sec. 1, Ch. 130, L. 1951.

#### **Amendment**

The 1951 amendment omitted the words "red or black raspberries" which followed "strawberries" in the first paragraph of subdivision 5 and inserted the words "except red or black raspberries" in the same paragraph and inserted the second sentence in paragraph (b) of subdivision 5.

#### **Repealing Clause**

Section 2 of Ch. 130, L. 1951 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 130, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

**90-136. (4250) Prohibition of use of weights pending adjustment.** If any weights, measures, scales or balances can be readily adjusted by such means as the sealer of weights and measures, or his deputies, may have at hand, he, or they may adjust and seal them, but if they can not be readily adjusted, he, or they, shall affix to such weights, measures, scales or balances a notice forbidding their use until he, or they are satisfied they have been so adjusted as to conform with the standard. It shall be unlawful for any person to remove such notice, without the written consent of the state sealer of weights and measures or his deputy. And in case said notice is removed without such written consent, the owner, manager, proprietor, lessee or anyone in active control of the business in connection with which said weights, measures, scales or balances are used after such removal of said notice, shall be deemed guilty of a misdemeanor and shall be punished accordingly.

**History:** En. Sec. 15, Ch. 34, L. 1911; amd. Sec. 16, Ch. 83, L. 1913; re-en. Sec. 4250, R. C. M. 1921; amd. Sec. 17, Ch. 146, L. 1939; amd. Sec. 1, Ch. 27, L. 1941; amd. Sec. 4, Ch. 143, L. 1951.

**Amendment**

The 1951 amendment substituted "state

sealer of weights and measures or his deputy" at the end of the second sentence for "officer affixing the same, unless proper repairs have been made" and omitted the words "before proper repairs have been made" following "without such written consent" in the third sentence.

**90-137. (4251) Condemnation of weights and measures not standard.** All weights, measures, and balances which cannot be made to conform to the standard weights, and measures as herein provided shall be stamped "condemned" or "C. D." by the state sealer of weights and measures, or his deputies, or the state sealer of weights and measures, or his deputies, may confiscate and seize, without warrant, any incorrect weight, measure, weighing or measuring device or part thereof which does not conform to the state standards or specifications, or which in his or their best judgment cannot be repaired. It shall be unlawful to offer or expose for sale, sell, use or possess a faulty scale, weight or measure, or any scale or measure used in buying or selling of any commodity or things and which has been rejected by the state sealer of weights and measures or his deputies. Scales commonly known as "family scales" or scales marked when sold "not legal in trade" shall not be deemed standard and shall be subject to such seizure. The state sealer of weights and measures, or his deputies, shall not be liable to the owner of the property for damages caused by such seizure. All persons owning coin weight scales shall place their name and address on the back of the scale. In all cases where inspection fees are not paid on coin weight scales, the same may be confiscated by the state sealer of weights and measures, or his deputies. Heavy duty scales of the pitless type shall not be sold or installed in any stock yards or for any other public weighing; provided that this shall not apply to pitless scales used by the highway department for check-weighing.

**History:** En. Sec. 16, Ch. 34, L. 1911; amd. Sec. 17, Ch. 83, L. 1913; re-en. Sec. 4251, R. C. M. 1921; amd. Sec. 18, Ch. 146, L. 1939; amd. Sec. 5, Ch. 110, L. 1945; amd. Sec. 5, Ch. 143, L. 1951.

**Amendment**

The 1951 amendment substituted the word "or" for "and" following "standards or specifications" near the end of the first sentence, and added the last sentence.



**90-140. (4254) Regulation of milk containers—complaints.** All milk, cream, and skimmed milk shall be sold only by standard wine measure, and by or in measures, cans, jars, bottles, or other vessels or receptacles, the standard measure or capacity of which shall be the gallon containing two hundred thirty-one (231) cubic inches, the half gallon containing one-half ( $\frac{1}{2}$ ) as much as the gallon, and the quart one-fourth ( $\frac{1}{4}$ ) as much as the gallon, and the pint one-half ( $\frac{1}{2}$ ) as much as the quart, and the half pint one-half ( $\frac{1}{2}$ ) as much as the pint, and the one-quarter pint one-half ( $\frac{1}{2}$ ) as much as the half pint. Any purchaser of milk, cream or skimmed milk, having reason to believe that any measure, can, jar, bottle, or other vessel or receptacle, in which milk, cream, or skimmed milk is sold and delivered to him, is not of sufficient size or capacity to contain, by standard wine measure, the amount thereof purchased, may apply to the sealer of weights and measures, or his deputies, who shall test the capacity of the same and issue to such purchaser his certificate stating the capacity thereof; and if such capacity, according to such certificate, shall be less than the amount purchased, such purchaser may make complaint to any court having jurisdiction.

**History:** En. Sec. 19, Ch. 34, L. 1911; measures of the half pint and the one-quarter pint.  
amd. Sec. 20, Ch. 83, L. 1913; re-en. Sec. 4254, R. C. M. 1921; amd. Sec. 21, Ch. 146, L. 1939; amd. Sec. 1, Ch. 59, L. 1959.

#### **Amendment**

The 1959 amendment added the standard

#### **Repealing Clause**

Section 2 of Ch. 59, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**90-146. (4260) Penalty for obstructing sealer.** Any person who neglects or refuses to produce for the state sealer of weights and measures, or his deputies, all weights, measures, balances or petroleum measuring devices in his possession and used in trade, or on his premises, or refuses to permit the said officers to examine the same, or obstructs the entry of said officers, or otherwise obstructs or hinders any official under this law shall be guilty of a misdemeanor and shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).

**History:** En. Sec. 25, Ch. 34, L. 1911; "and shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00)."  
re-en. Sec. 26, Ch. 83, L. 1913; re-en. Sec. 4260, R. C. M. 1921; amd. Sec. 26, Ch. 146, L. 1939; amd. Sec. 1, Ch. 90, L. 1957.

#### **Amendment**

The 1957 amendment inserted the words "or petroleum measuring devices" and added at the end of this section the words

#### **Repealing Clause**

Section 2 of Ch. 90, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**90-147. (4261) State sealer to promulgate rules.** The state sealer of weights and measures is hereby authorized to make and promulgate such rules and regulations in conformity with this act as may be proper and necessary to carry out the provisions of this act in a uniform manner. Such rules and regulations when adopted by the state sealer of weights and measures shall have the same force and effect as if provided for in this act.

**History:** En. Sec. 28, Ch. 34, L. 1911; 4261, R. C. M. 1921; amd. Sec. 27, Ch. 146, re-en. Sec. 27, Ch. 83, L. 1913; re-en. Sec. L. 1939; amd. Sec. 6, Ch. 143, L. 1951.

**Amendment**

The 1951 amendment inserted the words "and promulgate," omitted the words "for the guidance and direction of his deputies" which followed "rules and regulations" in the first sentence and substituted "if" for "as" preceding "provided for in this act" at the end of the section.

**Repealing Clause**

Section 7 of Ch. 143, L. 1951 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 8 of Ch. 143, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

**CHAPTER 2—APPLES, GRADES AND BOXES**

Section 90-201. Grades of apples.

**90-201. (4265.1) Grades of apples.** The standard grades of apples for the state of Montana shall be: "Extra fancy or first grade", "Fancy or second grade", "C", "Combination grade", and "Hail grade".

(a) "Extra fancy or first grade", shall consist of apples of one variety which are mature, hand picked, clean, well formed, sound, free from bruises, limbrubs, spray burns, sunburn, russeting, drought spot, hail marks, visible water-core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade.

(b) "Fancy or second grade" shall consist of apples of one variety which are mature, hand picked, clean, fairly well formed, sound, free from visible water-core, broken skin, and from damage caused by bruises, limb-rub, spray burns, sunburn, russeting, drought spot, hail marks, apple scabs, diseases and insect injury.

(c) "C" grade shall consist of apples of one variety which are mature, hand picked, clean, not badly misshapen, sound, free from broken skin and from serious damage caused by bruises, limbrub, russeting, drought spot, hail marks, apple scab, diseases and insect injury, and must have fifteen per centum (15%) of color requirements characteristic of the variety. The word "choice" must not be used in connection with this grade.

(d) Cull apples shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of extra fancy or first grade, fancy or second grade, or of "C" grade and shall be marked in block letters not less than one [1] inch in height on both ends of box "culls".

(e) "Combination grade". When "extra fancy or first grade" and "fancy or second grade" apples are packed together, the boxes must be marked "combination extra fancy or first grade and fancy or second grade". This combination grade must contain at least twenty-five per centum (25%) of apples which belong to the higher grade in the combination.

(f) "Hail grade" shall meet all requirements of "Extra fancy", "Fancy grade" except hail marks. Such hail marks must not materially deform or disfigure the fruit or affect more than one-tenth (1/10) of the surface in the aggregate where skin has not been broken. Provided, that unhealed hail marks shall not be permitted and not more than an aggregate area of one-half (1/2) inch shall be allowed for well-healed hail marks where the skin has been broken.

(g) No apples smaller than two and one-fourth ( $2\frac{1}{4}$ ) inches in diameter shall be permitted in any grade.

Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than one [1] inch in height on both ends of box, provided such apples are free from insect pests and diseases.

(h) In order to provide for variations incident to commercial grading and handling a tolerance of ten per centum (10%) for a total of all defects from the standard of the grade shall be allowed.

**History:** En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951.

#### Amendment

The 1951 amendment substituted "Hail grade" for "XFFC," omitted a second sentence from paragraph (e) which read "When 'fancy or second grade' and 'C' grades are packed together, the boxes must be marked 'combination fancy or second grade and, 'C',", substituted "This com-

bination grade" for "Combination grades" and substituted present paragraph (f) for a paragraph prescribing "XFFC" grade as a combination of "extra fancy or first grade" not less than 20%, "fancy or second grade" fifty percent and "C" grade not more than 30%.

#### Repealing Clause

Section 2 of Ch. 43, L. 1951 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 3—BREAD—STANDARD WEIGHT AND LOAF

Section 90-301. Weight requirements for sale of bread.

90-301.1. Definitions and standards governing manufacture of bakery products.

**90-301. (4273) Weight requirements for sale of bread.** From and after the passage of this act it shall be unlawful for any person or persons, association, co-partnership or corporation to manufacture for retail or wholesale trade, or to sell bread, unless the same shall be of the following weights, which shall be net weights twelve hours after baking: "Standard loaf," which shall weigh not less than fifteen (15) ounces and not more than seventeen (17) ounces in an individual loaf, provided, however, that the average weight of not less than twenty-five loaves of a standard loaf shall be not less than sixteen ounces; "Standard large loaf," which shall weigh not less than twenty-two and one-half ( $22\frac{1}{2}$ ) ounces and not more than twenty-five and one-half ( $25\frac{1}{2}$ ) ounces in an individual loaf, provided, however, that the average weight of not less than twenty-five loaves of a standard large loaf be not less than twenty-four ounces; provided, however, that larger loaves having weights that are multiples of the mean weight of a standard loaf weight may be manufactured and sold to restaurants, caterers, sandwich makers, hotels, commissaries, institutions, or other public eating places, with the total tolerance in excess or deficiency for each such larger weight loaf not to exceed two (2) ounces. This act shall not apply to rolls or to fancy bread weighing less than one-quarter of a pound.

**History:** En. Sec. 1, Ch. 155, L. 1919; re-en. Sec. 4273, R. C. M. 1921; amd. Sec. 2, Ch. 252, L. 1957.

#### Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

#### Repealing Clause

Section 3 of Ch. 252, Laws 1957 repealed sections 90-302 and 90-303, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict therewith.



**90-301.1. Definitions and standards governing manufacture of bakery products.** The state board of health is authorized and directed to adopt definitions and standards governing the manufacture of bakery products. Such definitions and standards shall be equal to those recommended by the federal food and drug administration under the federal food, drug and cosmetic act when such federal standards exist. This legislation shall in no manner affect food and drug legislation now in existence for other foods.

**History:** En. Sec. 1, Ch. 252, L. 1957.

**90-302, 90-303. (4274, 4275) Repealed.**

**Repeal**

These sections (Secs. 2, 3, Ch. 155, L. 1919), relating to conditions under which

bread may be sold, and the return or re purchase of bread, were repealed by Sec. 3, Ch. 252, Laws 1957.

**CHAPTER 4—TIME**

**90-407. (10707) Computation of time.**

**Construction**

In 1864 the First Legislative Assembly of the Territory of Montana by the enactment of section 430 of the Bannack Statutes at page 130 incorporated into the law of this jurisdiction the common-law rule and formula for computing time by excluding the first day and including the last which at all times since has been and now is the written law of this jurisdiction. State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Perieich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

The legislature, by this section, has prescribed the one and only lawful rule or formula for computing both the maximum and the minimum number of days designated in section 75-1606. It computes by "excluding the first day and including the last" day. State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Perieich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

In computing whether a nomination was made at least 40 days before the day of election, resort must be had to this section which requires that in computing time you exclude the first day and include the last day; thus where date of election was April 3, 1954 the last day for nominating meetings was February 22. State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Perieich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

**Removal of Public Officer**

In determining time under section 94-5516 which provides that party charged must be cited to appear "not more than ten nor less than five days from the time the accusation was presented" in action to remove public officer both the first and last day should be excluded. State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, overruled in State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998.

**References**

Cited or applied in Fey v. A A Oil Corp., 126 M 552, 255 P 2d 339, 341; First National Bank of Missoula v. Mercer, 128 M 535, 279 P 2d 695, 697.

## TITLE 91—WILLS, SUCCESSION, PROBATE AND GUARDIANSHIP

- Chapter 1. Wills—execution and revocation, 91-104 to 91-104.2.  
3. Wills—general provisions, 91-321.  
4. Succession, 91-423 to 91-430.  
5. Escheated estates—inheritance by nonresident aliens—disposal of unclaimed property, 91-502, 91-510, 91-512, 91-520, 91-521.  
8. Probate proceedings—probate of wills, 91-811.  
10. Probate of foreign wills, 91-1001.  
17. Oaths and bonds of executors and administrators, 91-1723.  
24. Provision for support of family, 91-2406.  
27. Claims against estate, 91-2702.  
30. Sales of real estate and contracts for purchase of land, 91-3001 to 91-3003, 91-3013.  
31. Mortgaging and leasing real estate, 91-3102, 91-3108.  
38. Determination of heirship and interest in estate, 91-3801, 91-3802.  
39. Final distribution of estate—discharge of executor or administrator, 91-3901.  
44. Inheritance tax, 91-4402, 91-4405, 91-4407, 91-4414, 91-4415, 91-4421, 91-4423, 91-4430.  
47. Guardians of insane and incompetent persons, 91-4704.  
48. Guardianship of incompetent veterans, minors, and other beneficiaries of the veterans administration, 91-4818.  
49. Guardian's powers and duties, 91-4911.

### CHAPTER 1—WILLS—EXECUTION AND REVOCATION

- Section 91-104. Who may take by will.  
91-104.1. Act not to repeal, restrict, qualify or limit, the provisions of sections 91-105 and 91-106.  
91-104.2. Application to estates remaining undistributed at the time act goes into effect.

#### 91-103. (6976) Will, or part thereof, procured by fraud.

Codicil as validating will or codicil which was invalid or inoperative at time of its purported execution. 21 ALR 2d 821.

Judgment denying validity of will because of undue influence, lack of mental capacity, or the like, as *res judicata* as to validity of another will, deed, or other instrument. 25 ALR 2d 657.

**91-104. (6977) Who may take by will.** A devise or a bequest, or both, or other testamentary disposition may be made to:

(a) Any natural person capable of taking the property so disposed of, or to any one or more of any of the following:

(b) To the United States of America, to any instrumentality of the United States of America, to the state of Montana, to any county in and of the state of Montana, and to municipal corporations in and of the state of Montana; or,

(c) To religious congregations, or churches, incorporated or unincorporated, including religious corporations sole; or,

(d) To unincorporated, benevolent, charitable, scientific, literary, educational or fraternal societies, associations or lodges, or to branches, chapters and units of any thereof, and to charities; or,

(e) To corporations heretofore or hereafter formed for benevolent, charitable, scientific, literary, educational, or fraternal purposes, or any thereof, or for hospital or sanitarium purposes; or,

(f) To corporations heretofore or hereafter formed for the operation and conduct of hospitals, or home or homes, or facilities, for the care of aged, sick or infirm adults, or for the care and custody of children, including children born out of wedlock, orphans, sick, crippled, infirm, dependent, neglected or abandoned children and minors; or directly to a hospital, home or homes by name or other description, and such devises or bequests to or for a hospital, home or homes, shall be construed to apply to the corporation owning or operating the same, or to the board of trustees or directors (however designated) of hospitals, home or homes, owned or operated by nonincorporated organizations or associations, and in any case for the benefit of the hospital, home or homes, as an institution and its humanitarian services; or,

(g) To corporations heretofore or hereafter formed primarily for the public preservation of forests and natural scenery; or,

(h) To corporations heretofore or hereafter formed to acquire, maintain or operate public libraries, public museums, or public art galleries, or historical sites or areas, or for public playgrounds, or recreation areas, or for other public purposes; and any one or more of any of such persons, governments, governmental agencies, religious congregations or churches (incorporated or unincorporated, including religious corporations sole), unincorporated associations, societies, lodges, or corporations heretofore or hereafter formed, mentioned or referred to in clauses (a) through (h) above, are hereby declared competent to take and receive property of all kinds by devise, bequest, or any other form of testamentary disposition.

Any one or more of the foregoing, whether incorporated or unincorporated, may take, accept and receive gifts, grants and donations by any other lawful means.

**History:** En. Sec. 437, p. 349, L. 1877; re-en. Sec. 437, 2nd Div. Rev. Stat. 1879; re-en. Sec. 437, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1722, Civ. C. 1895; re-en. Sec. 4725, Rev. C. 1907; re-en. Sec. 6977, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1955. Cal. Civ. C. Sec. 1275. Based on Field Civ. C. Sec. 546.

Power and capacity of bank to take devise or bequest. 8 ALR 2d 454.

Nonreligious, noneducational, or non-charitable trust, validity of testamentary gift to. 8 ALR 2d 614.

Felonious killing of testator as affecting slayer's rights as beneficiary under will. 26 ALR 2d 960.

Right of witness to a noncupative will to take as beneficiary thereunder. 28 ALR 2d 796.

Legality of testamentary gift to illegitimate. 34 ALR 2d 10.

#### Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

**91-104.1. Act not to repeal, restrict, qualify or limit, the provisions of sections 91-105 and 91-106.** Nothing herein contained shall be construed to repeal, restrict, qualify or limit, the provisions of sections 91-105 and 91-106, Revised Codes of Montana, 1947, referring to the state of Montana and its institutions, and enabling the state and its institutions to take by testamentary disposition, devise, bequest, gift or grant, and enabling any person over the age of eighteen (18) years to make donations, gifts, grants, bequests, devises and testamentary dispositions to the state of Montana and its institutions, as in said sections 91-105 and 91-106, Revised Codes of Montana, 1947, set forth.

**History:** En. Sec. 2, Ch. 173, L. 1955.



**91-104.2. Application to estates remaining undistributed at the time act goes into effect.** This act is hereby expressly declared to be retroactive to the extent that it shall apply to all estates which remain undistributed at the time of the effective date of this act.

**History:** En. Sec. 3, Ch. 173, L. 1955.

**Repealing Clause**

Section 4 of Ch. 173, Laws 1955 read "all acts and parts of acts in conflict herewith are hereby repealed, except as herein preserved."

**Effective Date**

Section 5 of Ch. 173, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

**91-107. (6980) Written will, how to be executed.**

**Attestation Clause**

Where the attestation clause is regular it presents a prima facie case of the due execution of the will which the court is entitled upon a proper showing to hold prevails over the testimony of the witnesses to the contrary. This is particularly true where the experience and familiarity on the part of the testator with the requisites of the execution of a will exist. In re Swords' Estate, 129 M 165, 284 P 2d 674, 677.

The court may accept statements in the attestation clause as against the mere words of the attesting witnesses to the contrary. In re Swords' Estate, 129 M 165, 284 P 2d 674, 678.

**Construction**

This section does not direct that the testator must sign or acknowledge his signature to the subscribing witnesses at a time when both such witnesses are present at the same time. Neither does the section direct that the subscribing witnesses must sign the will at a time when both are present or in the presence of each other. To hold otherwise is to read into the section a requirement that is not there and was not written into such sec-

tion by the legislators who enacted it into law. In re Woodburn's Estate, 128 M 145, 273 P 2d 391, 394.

The purposes of a statute requiring witnesses to a will are fully met and satisfied when this section is interpreted and construed to permit a testator to sign or acknowledge his will to the subscribing witnesses separately; and such witnesses to sign their names while not in the presence of each other. In re Woodburn's Estate, 128 M 145, 273 P 2d 391, 395.

**Operation and Effect**

A power of attorney to a physician to perform all medical services for decedent for which he was to receive \$2,000, any portion of such amount unpaid on her death to be paid by her executor, was invalid unless executed in compliance with this section. Trenouth v. Mulrone, 124 M 499, 227 P 2d 590, 597.

Effect of testator's attempted physical alteration of will after execution. 24 ALR 2d 514.

Interlineations and changes as appearing on face of will. 34 ALR 2d 619.

Validity of will written on disconnected sheets. 38 ALR 2d 477.

**91-108. (6981) Definition of a holographic will.**

**Operation and effect**

An instrument which meets all the requirements of a holographic will under this statute is sufficient to transfer real estate in Montana upon probate. In re Gift's Estate, 125 M 95, 232 P 2d 328, 331.

A letter, written some five years after the execution of a will, in which the deceased states that he wants his son to be administrator and in which no reference was made of the prior will was not a holographic will nor was it a codicil to decedent's earlier formal will. In re Hansen's Estate, 126 M 522, 254 P 2d 1073.

**91-115. (6988) Will made out of state.**

**References**

Cited or applied in In re Gift's Estate, 125 M 95, 232 P 2d 328, 332.

**Testamentary Intent**

Held, that the letter and surrounding circumstances showed that the decedent had testamentary intent necessary for a valid holographic will. In re Van Voast's Estate, 127 M 450, 266 P 2d 377. (See, however, dissenting opinions, 127 M 450, 266 P 2d 377 at 380 and 389.)

Place of signature of holographic wills. 19 ALR 2d 926.

Validity of will written on disconnected sheets. 38 ALR 2d 477.

**91-117. (6990) Republication by codicil.****Letter**

A letter, written some five years after execution of a will, in which the deceased states that he would like for his son to be administrator and the letter

makes no reference whatever to any prior will, such letter cannot be a codicil to the prior will. In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

**91-122. (6995) Written will—how revoked.****Operation and Effect**

Decedent's will was not revoked by a later letter to his son in which he states that he wants his son to be administrator. The letter made no suggestion or declaration of a revocation of his prior will, nor

is there any reference thereto. No attempt was made to comply with the provisions of section 91-125 and this section. In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

**91-124. (6997) Revocation of duplicate.**

Destruction or cancelation of one copy of will executed in duplicate, as revocation of other copy. 17 ALR 2d 805.

**91-125. (6998) Revocation by subsequent will.****Operation and Effect**

Decedent's will was not revoked by a later letter to his son in which he states that he wants his son to be administrator. The letter made no suggestion or declaration of a revocation of his prior will nor

is there any reference thereto. No attempt was made to comply with the provisions of section 91-122 and this section. In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

**91-127. (7000) Revocation by marriage and birth of issue.**

Adoption of child as revoking will. 24 ALR 2d 1085.

Wills: Revocation as affected by invalidity of some or all of dispositive provisions of later codicil. 28 ALR 2d 926.

**91-128. (7001) Effect of marriage of a man on his will.****Second Marriage**

Where the public policy of this state does not prevent the recognition of a Nevada divorce, the Nevada decree is not

subject to collateral attack, and a second marriage performed in this state revokes an existing will. In re Anderson's Estate, 121 M 515, 194 P 2d 621.

**91-129. (7002) Effect of marriage of a woman on her will.**

Remarriage of woman after death of or divorce from former husband as revok-

ing will executed during former marriage. 9 ALR 2d 510.

**91-135. (7008) After-born child, unprovided for, to succeed.****References**

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 393.

**91-136. (7009) Children or issue of children of testator, etc.****Operation and Effect**

This section can have no application unless it appears from the will that testatrix unintentionally omitted to provide for the children or the issue of a deceased child. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1142.

Any provision which affords evidence that the child or the issue of any deceased child had not been forgotten is sufficient to prevent the application of this section. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1146.

The words "omits to provide" for any children or for the issue of any deceased child as used in this section mean simply an omission to make a provision in the will and have no reference to the pecuniary value of the provision. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1146.

**Purpose of Section**

The legislative purpose in enacting this section was not to restrict the testatrix or to dictate to her what provisions she

should make. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1146.

#### Will Construed to Apply to Children

Where will contained provision for "each of my heirs-at-law not elsewhere herein mentioned" to receive the sum of one dollar, such provision applied to children of a deceased child, the residuary clause naming part of the living children by name and another clause specifically dis-inheriting the other living children by

name and there was no omission. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1143.

#### References

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 393.

Right of illegitimate child to take under testamentary gift to "children." 34 ALR 2d 4.

### 91-139. (7012) Lineal descendants take estate upon death of devisee, etc.

#### References

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 393.

Benefit of direction in will for payments by devisee or legatee to third person as surviving latter's death and passing as part of his estate. 6 ALR 2d 366.

Devise or bequest to designated individual "or his estate," "or his children," "or his representative," or the like (other than "or his heirs"), as subject to lapse in event of individual's death before that of testator. 11 ALR 2d 1387.

### 91-142. (7015) Restriction to devise for charitable purposes.

Valuation of estate for purposes of statutes limiting amount or proportion that may be devised or bequeathed for charit-

able purposes; problems of computation. 11 ALR 2d 1142.

## CHAPTER 2—WILLS—INTERPRETATION

### 91-201. (7016) Testator's intention to be carried out.

#### Nomination of Executor

A testator, in his will, may designate a person who is to have the authority to nominate an executor. In re Effertz' Estate, 123 M 45, 207 P 2d 1151, 1154, 11 ALR 2d 1278.

Whether an Adopted Child is "Issue" and Entitled to Legacy through Adoptive Parent

Under section 61-134, an adopted child inherits from his adoptive parent, but there is no alteration in the general rule that "issue" does not include an adopted child when he seeks to inherit not from, but through, his adoptive parent. In re Miller's Trust, 133 M 354, 323 P 2d 885, 887.

### 91-202. (7017) Intention to be ascertained from will.

#### References

Cited or applied in In re Miller's Trust, 133 M 354, 323 P 2d 885, 886.

Admissibility of extrinsic evidence upon issue of testamentary intent. 21 ALR 2d 319.

### 91-203. (7018) Rules of interpretation.

#### References

Cited or applied in In re Miller's Trust, 133 M 354, 323 P 2d 885, 886.

### 91-204. (7019) Several instruments are to be taken together.

Incorporation in will of extrinsic document not in existence at date of will. 3 ALR 2d 682.

### 91-207. (7022) When ambiguous or doubtful.

Effect of will which disposes of specific mathematical percentages or proportions of residuary estate but disposes of more or less than the whole thereof. 17 ALR 2d 653.

What passes under term "possessions" in will. 33 ALR 2d 550.

Purview of gift, charge or like, for "college education." 36 ALR 2d 1323.



**91-208. (7023) Words taken in ordinary sense.**

What constitutes oil or gas "royalty" within language of devise. 4 ALR 2d 492.

Word "child" or "children" in will as including grandchild or grandchildren. 14 ALR 2d 1242.

What passes under and is included, devise of "home" or "home place." 28 ALR 2d 840.

**91-209. (7024) Words to receive an operative construction.****Children Not Specifically Mentioned**

Where will contained provision that the residue of the estate should go to certain named children, and a provision that certain named children were intentionally omitted and another provision that "my heirs-at-law not elsewhere herein mentioned" shall receive one dollar, such latter provision will be construed to apply to children of a deceased child not named in the other provisions of the will. In re

Benolken's Estate, 122 M 425, 205 P 2d 1141, 1143.

**Compliance with Terms of Will**

Where will provided that the court should appoint "the nominee of the Roman Catholic Bishop" as executor, the court could not disregard such provision and appoint another as administrator with the will annexed. In re Effertz' Estate, 123 M 45, 207 P 2d 1151, 1154, 11 ALR 2d 1278.

**91-211. (7026) Effect of technical words.****"Heirs-at-Law"**

The words "heirs-at-law" applied to the children of a deceased child of the testatrix. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1144.

"Heirs," "heirs-at-law," and "legal heirs" are in a legal sense the same. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1143.

**"Issue"**

In the absence of testator's intention or statute an adopted child was not to be included in a legacy passing to a son and his "issue," since the term "issue" is intended to refer to natural or blood relationships, or descendants. In re Miller's Trust, 133 M 354, 323 P 2d 885, 886.

**Operation and Effect**

Where the deceased in a holographic will bequeathed certain personal property to a Katherine Clauson and "also the residue of my estate after all bequests are taken care of," the word "bequeath" is sufficient to include real estate located in Montana. In re Gift's Estate, 125 M 95, 232 P 2d 328, 331.

"Proceeds" in will as indicating intention as to whether assets are to constitute principal or income. 1 ALR 2d 194.

**91-212. (7027) Technical words not necessary.****Operation and Effect**

The word "bequeath" is sufficient to include real estate where the deceased in a holographic will bequeathed certain articles of personal property to Katherine Clauson and "also the residue of my estate after all bequests are taken care

of." In re Gift's Estate, 125 M 95, 232 P 2d 328, 331.

"Proceeds" in will as indicating intention as to whether assets are to constitute principal or income. 1 ALR 2d 194.

**91-218. (7033) "Heirs," "relatives," "issue," "descendants," etc.****"Heirs-at-Law"**

Heirs-at-law are those determined under the Code provisions on succession in force at the time of death of the testatrix. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1144.

**"Issue"**

This section means that when one makes a testamentary disposition of property to the "issue" of his natural son it is to be understood that by using the word issue he meant only those who would take according

to the provisions of the chapter on succession, and this does not mean that where the property passed first to the son of a testatrix with the remainder over to the issue of the son that the meaning of the word "issue" is controlled by this section. In re Miller's Trust, 133 M 354, 323 P 2d 885, 887.

**Operation and Effect**

Section 91-219 greatly restricts the force of this section and this section has application only to a case where the donation

is made by the testator directly to the person designated therein and does not apply to a case where the bequest was given to the adoptive parent and where the adopted child was designated only as the issue of testatrix' son, and the adoption did not take place until after the death of the testatrix. In re Miller's Trust, 133 M 354, 323 P 2d 885, 887.

Under section 61-134 an adopted child inherits from his adoptive parent but the general rule that "issue" does not include

an adopted child seeking to inherit through the adoptive parent is not altered by this section. In re Miller's Trust, 133 M 354, 323 P 2d 885, 887.

Time of ascertainment of membership with respect to devise or bequest to class which takes effect at testator's death. 6 ALR 2d 1342.

Who are within gift or grant to "offspring." 23 ALR 2d 842.

## **91-219. (7034) Words of donation and of limitation.**

### **"Heirs-at-Law"**

The words "my heirs-at-law" as used in a will were words of donation expressing a gift, a gratuitous transfer of property from one to another. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1144.

### **Operation and Effect**

This section greatly restricts the force of section 91-218. In re Miller's Trust, 133 M 354, 323 P 2d 885, 887, 889.

## **91-220. (7035) To what time words refer.**

Words of survivorship in will disposing of estate in remainder as referable to

death of testator or to termination of intervening estate. 20 ALR 2d 830.

## **91-221. (7036) Devise or bequest to a class.**

Time of ascertainment of membership with respect to devise or bequest to class which takes effect at testator's death. 6 ALR 2d 1342.

Taking per stirpes or per capita under will. 13 ALR 2d 1023.

## **91-225. (7040) When devises and bequests vest.**

### **References**

Cited or applied in In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 658.

Provision of will for forfeiture in case of contest, as applied to contest by one not a beneficiary. 7 ALR 2d 1357.

## **91-226. (7041) When cannot be divested.**

Antilapse statute as applicable to devise or bequest in terms of distributive share, under law, in estate of testator. 3 ALR 2d 1419.

Appointee's renunciation of appointment. 9 ALR 2d 1382.

## **91-227. (7042) Death of devisee or legatee.**

### **References**

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 393.

Antilapse statute as applicable to devise or bequest in terms of distributive share, under law, in estate of testator. 3 ALR 2d 1419.

Benefit of direction in will for payments by devisee or legatee to third person as

surviving latter's death and passing as part of his estate. 6 ALR 2d 366.

Devise or bequest to designated individual "or his estate," "or his children," "or his representatives," or the like (other than "or his heirs"), as subject to lapse in event of individual's death before that of testator. 11 ALR 2d 1387.

## **91-228. (7043) Interests in remainder are not affected.**

Murder of life tenant by remainderman or reversioner as affecting latter's rights

to remainder of reversion. 24 ALR 2d 1120.

## **91-229. (7044) Conditional devises and bequests.**

### **Operation and Effect**

A power of attorney to a physician to perform all medical services for decedent for which he was to receive \$2,000, any

unpaid balance thereof to be paid by her executor contained a conditional disposition. Trenouth v. Mulroney, 124 M 499, 227 P 2d 590, 596.

Substitution of beneficiaries upon devise or bequest to designated individual "or his estate," "or his children," "or his

representatives," or the like, other than "or his heirs." 11 ALR 2d 1387.

### 91-235. (7050) **Advancements—when ademptions.**

Construction and effect of general legacy conditional upon ademption of specific legacy or devise to legatee. 2 ALR 2d 819.

Ademption of legacy of business or interest therein. 16 ALR 2d 1404.

## CHAPTER 3—WILLS—GENERAL PROVISIONS

Section 91-321. Devise or bequest to trustee of inter vivos trust established by testator—validity—property not deemed held under testamentary trust.

### 91-303. (7053) **Order of resort to estate for debts.**

Phrase in will, "subject to payment of debts," and the like, as charging particular devise or bequest with debts in exoneration

of property otherwise subject thereto. 2 ALR 2d 1310.

### 91-304. (7054) **Same—for payment of legacies.**

Legacy accepted by surviving spouse in lieu of dower for other marital rights as charge upon real estate, where per-

sonalty is insufficient to pay legacy. 2 ALR 2d 607.

### 91-310. (7060) **Bequest of interest.**

"Proceeds" in will as indicating intention as to whether assets are to constitute principal or income. 1 ALR 2d 194.

### 91-311. (7061) **Satisfaction.**

Satisfaction or ademption of general legacy by inter vivos gift, transfer, or

payment to the legatee or another. 26 ALR 2d 9.

### 91-315. (7065) **Executor according to the tenor.**

Delegation of Authority to Name Executor

A testatrix has the right to delegate to the person in whom she has confidence

and trust the power to name the executor of her will. In re Effertz' Estate, 123 M 45, 207 P 2d 1151, 1154, 11 ALR 2d 1278.

### 91-319. (7069) **The law of what place applies.**

#### Operation and Effect

The validity of a transfer of real property in Montana by means of a holo-

graphic will is determined by Montana law. In re Gift's Estate, 125 M 95, 232 P 2d 328, 332.

**91-321. Devise or bequest to trustee of inter vivos trust established by testator—validity—property not deemed held under testamentary trust.** A devise or bequest may be made by a will to a trustee or trustees of a trust created by the testator or some other person, including a funded or unfunded life insurance trust, although the grantor or settlor has reserved any or all rights of ownership of the insurance contracts, when the trust is established by written instrument executed before or concurrently with the execution of such will. Such devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the date of execution of the will. Unless the will provides otherwise, the property so devised or bequeathed shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given to be administered and disposed of in accordance with the provisions of the instru-



ment establishing such trust, including any amendments thereto, made prior to the death of the testator, regardless of whether made before or after the execution of the will. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest.

**History:** En. Sec. 1, Ch. 185, L. 1959.

#### **Title of Act**

An act to provide for devises or bequests to a trust by will when the trust is amendable or revocable, or both, or because the trust was amended after the date of execution of the will; to provide that the property so devised or bequeathed shall not

be deemed to be held under a testamentary trust, unless the will provides otherwise; and containing a repealing clause.

#### **Repealing Clause**

Section 2 of Ch. 185, Laws 1959 repealed all acts or parts of acts in conflict therewith.

### **CHAPTER 4—SUCCESSION**

**Section 91-423.** Uniform Simultaneous Death Act—disposition of property when no sufficient evidence of survivorship.

91-424. Simultaneous death of successive beneficiaries—division of property.

91-425. Simultaneous death of joint tenants or tenants by the entirety.

91-426. Insurance policies—death of insured and beneficiary.

91-427. Act not retroactive.

91-428. Act does not apply if decedent provides otherwise.

91-429. Uniformity of interpretation.

91-430. Short title.

#### **91-401. (7071) Succession defined.**

##### **References**

Cited in *In re Miller's Trust*, 133 M 354, 323 P 2d 885, 887.

#### **91-402. (7072) Intestate estate—to whom passes.**

##### **Confirmation of Sale of Property—Heirs as Necessary Parties**

Where sale of land was made by oral agreement with administrator without confirmation of court, and thereafter to clear title a petition for sale of land was filed and bids were received, one by the purchaser for the amount so paid and one from another party for more than twice the amount bid by the purchaser (see section 91-3016), and sale was confirmed in such purchaser, such sale and judgment of confirmation were void on objection of the heirs although no fraud was practiced, the heirs not being parties to the proceeding. *Larson v. Whitmer*, 124 M 399, 224 P 2d 983, 986.

##### **Operation and Effect**

Where a person dies without a will the property passes to the heirs immediately subject to administration, therefore the fact that a person claims to be the owner of all the property of the estate of his deceased mother does not affect his statutory right to administer the estate. *In re Wilcox' Estate*, 122 M 290, 201 P 2d 989, 991.

##### **References**

Cited in *In re Van Voast's Estate*, 127 M 450, 266 P 2d 377, 382 (dissenting opinion); *In re Gaspar's Estate*, 128 M 383, 275 P 2d 656, 658.

#### **91-403. (7073) Succession to and distribution of estates.**

##### **"Heirs-at-Law"**

Heirs-at-law are those determined under the Code provisions on succession in force at the time of death of the testatrix. *In re Benolken's Estate*, 122 M 425, 205 P 2d 1141, 1144.

##### **Right of Adopted Child to Inherit from Natural Parents**

Nothing in the adoption laws of Montana nor in any other Montana laws says

that upon adoption, the lawfully begotten bodily issue of a person ceases to be the heir of its natural parent. *In re Kay's Estate*, 127 M 172, 260 P 2d 391, 395.

The adoption of a child does not destroy his status as one of the issue of his natural ancestors nor does an adopted child lose his right to inherit from his natural parent. *In re Kay's Estate*, 127 M 172, 260 P 2d 391, 395.

**References**

Cited in *Harrison v. Cannon*, 122 M 318, 203 P 2d 978; In re *Van Voast's Estate*, 127 M 450, 266 P 2d 377, 381 (dissenting opinion); In re *Gaspar's Estate*, 128 M 383, 275 P 2d 656, 659.

with respect to devise or bequest to class which takes effect at testator's death. 6 ALR 2d 1342.

Time of ascertainment of membership

**91-404. (7074) Illegitimate children to inherit in certain events.**

Right of illegitimate to take under testamentary gift to "heirs." 27 ALR 2d 1232.

**91-406. (7076) Degrees of kindred—how computed.**

Time of ascertainment of membership with respect to devise or bequest to class which takes effect at testator's death. 6 ALR 2d 1342.

**91-423. Uniform Simultaneous Death Act—disposition of property when no sufficient evidence of survivorship.** Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this act.

**History:** En. Sec. 1, Ch. 20, L. 1951.

Dakota, Tennessee, Vermont, Virginia, Washington, Wisconsin and Wyoming.

**Compiler's Note**

The Uniform Simultaneous Death Act has been adopted by Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South

**Title of Act**

An act providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously, and to make uniform the law with reference thereto, and repealing paragraph forty (40), section 93-1301-7, Revised Codes of Montana of 1947

Death 5.

25 C.J.S. Death § 11.

**91-424. Simultaneous death of successive beneficiaries—division of property.** Where two [2] or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

**History:** En. Sec. 2, Ch. 20, L. 1951.

**91-425. Simultaneous death of joint tenants or tenants by the entirety.** Where there is no sufficient evidence that two [2] joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two [2] joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

**History:** En. Sec. 3, Ch. 20, L. 1951.

**91-426. Insurance policies—death of insured and beneficiary.** Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

History: En. Sec. 4, Ch. 20, L. 1951.

**91-427. Act not retroactive.** This act shall not apply to the distribution of the property of a person who has died before it takes effect.

History: En. Sec. 5, Ch. 20, L. 1951.

**91-428. Act does not apply if decedent provides otherwise.** This act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this act.

History: En. Sec. 6, Ch. 20, L. 1951.

**91-429. Uniformity of interpretation.** This act shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

History: En. Sec. 7, Ch. 20, L. 1951.

**91-430. Short title.** This act may be cited as the Uniform Simultaneous Death Act.

History: En. Sec. 8, Ch. 20, L. 1951.

#### Repealing Clause

Section 9 of Ch. 20, L. 1951 repealed all acts and parts of acts in conflict therewith and paragraph 40 of sec. 93-1301-7, R. C. M. 1947.

#### Separability Clause

Section 10 of Ch. 20, L. 1951 read "If

any of the provisions of this act or the application thereof to any persons or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable."

### CHAPTER 5—ESCHEATED ESTATES—INHERITANCE BY NONRESIDENT ALIENS—DISPOSAL OF UNCLAIMED PROPERTY

Section 91-502. Title to escheated property vests in state—when.

91-510. Disposition of moneys from escheated estates.

91-512. Duty of attorney general—employment of special assistant.

91-520. Conditions under which aliens in foreign country may inherit.

91-521. Duties of executors and administrators in estates involving alien heirs.

**91-502. Title to escheated property vests in state—when.** Whenever the title to any property, either real or personal, or mixed, fails for any reason including want of heirs or next of kin, such title shall vest in the state of Montana immediately upon the death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such



period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

All sums escheated under the provisions of the Escheated Property Act shall be deposited by the treasurer in the escheated estates fund; in connection with the recovery of money or property from escheats other than those from estates, the state treasurer is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Moneys and properties placed in the escheated estates fund shall be held in trust for a period of ten (10) years prior to deposit in the public school fund by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title, or interest in the property or money escheated may make claim upon the escheated estates fund by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property.

**History:** En. Sec. 2, Ch. 184, L. 1943;  
amd. Sec. 1, Ch. 170, L. 1953.

#### **Amendment**

The 1953 amendment substituted the word "or" for a comma which appeared after the word "real" and added the words "any reason including" in the first sentence; added the proviso to the first paragraph and added the second, third and fourth paragraphs to this section.

#### **Repealing Clause**

Section 2 of Ch. 170, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 170, Laws 1953 provided the act should be in effect immediately upon its passage and approval. Approved March 3, 1953.

### **91-509. Court action by claimant of property, etc.**

#### **References**

Cited or applied in the dissenting opin-

ion in *In re Stoian's Estate*, 128 M 52, 269 P 2d 1085, 1089.

**91-510. Disposition of moneys from escheated estates.** All money or property which is at the time of the passage and approval of this act in the hands of the state treasurer, from escheated estates, shall be placed by him in a fund to be known as the escheated estates fund of the State of Montana: Out of said fund the state treasurer shall pay all claims regularly presented against the state and approved by the state board of examiners in order to defray the costs of enforcing this act and all other acts relating to escheated estates in an amount to be designated and

appropriated by the legislative assembly of the state of Montana each biennium. "Costs" shall be construed to mean such expenses as are necessarily employed in the enforcement and administration of the escheated estate laws and all other expenses of enforcing the provisions of the laws relative to escheated estates.

All other sums remaining in the escheated estates fund and not otherwise herein provided for administrative purposes and expenses shall be deposited by the state treasurer in the public school fund on the first day of July, 1953, and on the first day of July of each year thereafter.

Provided further, however, that trust estates created under the provisions of section 91-520, Revised Codes of Montana, 1947, as amended, shall not become a part of the escheated estates fund until finally escheated as provided by law.

**History:** En. Sec. 10, Ch. 184, L. 1943; amd. Sec. 1, Ch. 165, L. 1953.

#### **Amendment**

The 1953 amendment completely rewrote this section. Prior to amendment it read: "All money or property, which is at the time of the passage and approval of this act, in the hands of the state treasurer, from escheated estates, shall be placed by him in the public school fund of the state of Montana and any person claiming such money or property at any time thereafter shall have two (2) years after the passage and approval

of this act in which to file and bring an action for the recovery of the same as hereinabove provided."

#### **Repealing Clause**

Section 3 of Ch. 165, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 2 of Ch. 165, Laws 1953 provided the act should be in effect immediately after its passage and approval. Approved March 3, 1953.

**91-512. Duty of attorney general—employment of special assistant.** The attorney general of the state of Montana shall be the legal advisor to the state treasurer in connection with all escheated property matters and it shall be the duty of the attorney general to make investigations and conduct inquiries to determine whether there is property in the state of Montana which should escheat to the state of Montana, and to take all steps necessary to secure such escheat, and for this purpose the attorney general is authorized and empowered to employ a special assistant at a salary not to exceed six thousand dollars (\$6,000.00) per annum together with actual, necessary expenses while engaged in outside work in connection with the duties of his office as defined by law. Such salary and expenses shall be payable monthly from the escheated estates fund.

**History:** En. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953.

#### **Amendment**

The 1953 amendment raised the salary of the special assistant from \$3,000 to \$6,000; added expense provisions and added the last sentence.

all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 2 of Ch. 193, Laws 1953 provided the act should be in effect immediately after its passage and approval. Approved March 4, 1953.

#### **Repealing Clause**

Section 3 of Ch. 193, Laws 1953 repealed

**91-520. Conditions under which aliens in foreign country may inherit.**  
1. No person shall receive money or property, save and except mining property, as provided in section 25, Article III, of the Constitution of the

state of Montana, as an heir, devisee and/or legatee of a deceased person leaving an estate or portion thereof in the state of Montana, if such heir, devisee and/or legatee, at the time of the death of said deceased person, is not a citizen of the United States and is a resident of a foreign country at the time of the death of said intestate or testator, unless, reciprocally, the foreign country in question would permit the transfer to an heir, devisee and/or legatee residing in the United States, of property left by a deceased person in said foreign country.

2. In order to prove reciprocity the alien heir, devisee and/or legatee must establish by competent evidence produced at a hearing to determine heirship; (a) that such foreign country recognizes the right of United States citizens to inherit property left by a deceased person in such foreign country; (b) that such foreign country places no restrictions upon the movement of money or property out of such foreign country to an heir, devisee and/or legatee residing in the United States.

3. If such proof as required by subsection 2 establishes the fact that such foreign country recognizes the right of inheritance, but restricts the movement of money or property out of such foreign country to an heir, devisee and/or legatee residing in, and a citizen of the United States, then and in that event, the court upon such a determination, shall at the time of final distribution, order the inheritance of such alien heir, devisee and/or legatee distributed to the state treasurer of the state of Montana, in trust for such named heir, devisee and/or legatee, under such conditions and restrictions as are imposed on the movement of money or property by such foreign country in question to an heir, devisee and/or legatee residing in, and a citizen of the United States.

4. In an action for dissolution of the trust so created, the following jurisdictional facts must be set forth in the complaint: (a) the name of the beneficiary of the trust; (b) the foreign country in which the beneficiary has his permanent residence; (c) the conditions and restrictions imposed upon the trust funds by the court in its decree of final distribution; (d) the fact that the beneficiary is in the state of Montana; (e) the verification of the complaint by the beneficiary before an official of the state of Montana authorized by law to administer oaths; (f) that the action has been commenced within the period of three (3) years of the date the trust was created, unless the conditions of the trust declare a shorter or longer period to exist in the country of the foreign heir's residence and that reciprocally such period has been imposed to satisfy the requirements of reciprocity, hereinabove set forth; (g) in the event that the beneficiary is a minor or insane person, his action must be instituted within the period of limitation herein provided for the commencement of the action, by his guardian, duly appointed under the laws of the country of residence of said minor or insane person and the record of such appointment shall be fully exemplified and attested by a duly accredited representative of the state department of the government of the United States of America in such foreign country; (h) unless the action herein provided shall have been commenced within three (3) years, or such shorter or longer period as is specifically declared as a condition of the trust, as hereinabove required, then such trust funds shall forthwith escheat



to the state of Montana, and no action can thereafter be instituted in the courts of this state for the recovery of such escheated trust funds.

5. The action provided for under the provision of subsection 4 hereof shall in all other respects comply with the requisites of section 91-518.

6. No estate in which alien heirs, devisees and/or legatees have a distributive share shall be considered to be in a condition to petition for final distribution, unless, the court enters a written order in such estate decreeing that an action for determination of heirship has been instituted in which the state of Montana was made a party-defendant and that a decree determining heirship has been entered and filed in said action.

**History:** En. Sec. 2, Ch. 104, L. 1939; amd. Sec. 1, Ch. 31, L. 1951; amd. Sec. 1, Ch. 144, L. 1953.

#### **Amendments**

The 1951 amendment added all that part of this section following the first paragraph.

The 1953 amendment in subsection 4 (f) added the number "(3)" and the part beginning with the words "unless the conditions"; in subsection 4 (h) inserted "(3)", the words "or such shorter or longer period as is specifically declared as a condition of the trust" and the word "hereinabove" between the words "as" and "required."

#### **Repealing Clauses**

Section 2 of Ch. 31, Laws 1951 and Sec. 2 of Ch. 144 Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 144, Laws 1953 provided this act should be in effect immediately after its passage and approval. Approved March 2, 1953.

#### **Determination of Heirship by Court**

Rather than relying on the opinion of a California court that heirs in Rumania may inherit from persons dying in this country since there is reciprocity between the United States and Rumania, a trial court should make its own determination of whether or not the country of Rumania has reciprocity with the United States in connection with inheritance after due notice is given to the interested litigants that a case decided in a sister state is to be used in connection with its findings and an opportunity afforded all litigants interested to be heard upon the question. Such trial court should also make a determination as to whether or not such foreign country places restrictions upon the movement of money or property out of such foreign country, and if so make its order accordingly. In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1088. (Dissenting opinions, 128 M 52, 269 P 2d 1085, 1088, 1089.)

#### **Foreign Law—Notice**

Before one can rely on a foreign country's law that persons in this country may inherit property located in the foreign country there must be notice given of the intent to rely on the foreign law. In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1088. (Dissenting opinions, 128 M 52, 269 P 2d 1085, 1088, 1089.)

#### **Operation and Effect**

Where reciprocity was shown and such foreign heirs were residents of Rumania, their shares in the estate of the deceased, by operation of law, passed to the attorney general of the United States, successor to the rights of the alien property custodian, because Rumania was a "designated enemy country." In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 659.

Where the decedent died in 1940, his estate vested immediately in his heirs and the 1951 amendment to this section which requires in proving reciprocity that the alien heir established that such foreign country places no restrictions upon the movement of money or property out of such foreign country, the amendment would not apply to the instant proceeding since it would take away or impair vested rights. In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 662.

#### **Operation of Amendment**

Where death occurred in 1949, the estate passed at that time and the amendment made in 1951 can have no application to this estate. In re Spoya's Estate, 129 M 83, 282 P 2d 452, 454.

In decree of distribution court improperly applied the provisions of this section, as amended, in setting up a trust of the property bequeathed and devised to certain foreign heirs, the state holding as trustee, where decedent died November 27, 1948. In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 242.

#### **Reciprocity—Burden of Proof**

The burden of proving reciprocity falls upon the foreign heirs, because they, being in the foreign country, are in a better position to prove the laws thereof than

any other party to the heirship proceedings. The fact that such burden rests upon the foreign heirs does not mean, however, that no other party to the heirship proceedings may make such proof, where it is to their interests to do so. In *re* Gaspar's Estate, 128 M 383, 275 P 2d 656, 659.

### Reciprocity—Proving

Certified copies of decisions of district courts, containing the seal of the court properly authenticated and in substantial compliance with 93-1001-19, showing in substance that in the cases under consideration American citizens either inherited property from the estate of one dying in Yugoslavia or the decision otherwise respected property rights of American citizens in property in Yugoslavia were properly received in evidence. In *re* Spoya's Estate, 129 M 83, 282 P 2d 452, 456.

Certificates made by the ambassador extraordinary and plenipotentiary of Yugoslavia to the United States to the effect that the Constitution and laws of Yugoslavia and treaties between Yugoslavia and the United States accord to citizens of the United States the reciprocal right

of inheritance equal to those accorded to citizens of Yugoslavia were properly received in evidence to prove reciprocity. In *re* Spoya's Estate, 129 M 83, 282 P 2d 452, 456.

The qualification of a witness to testify as an expert is a matter within the sound discretion of the trial court, and where there is no showing of a clear abuse of that discretion the ruling of that court will not be disturbed on appeal. In *re* Spoya's Estate, 129 M 83, 282 P 2d 452, 455.

It is not a requirement that before a person can be an expert in the field of foreign law that he must have been admitted to practice law in some jurisdiction. In *re* Spoya's Estate, 129 M 83, 282 P 2d 452, 455.

Portions of the Constitution of Yugoslavia, certified to by the Minister of Justice of Yugoslavia, and relating to the inheritance of private property were properly received in evidence. In *re* Spoya's Estate, 129 M 83, 282 P 2d 452, 456.

### References

Cited in *re* Bell's Estate, — M —, 331 P 2d 517, 521.

**91-521. Duties of executors and administrators in estates involving alien heirs.** In any estate where money or property would have vested in any alien person but for the provisions of section 91-520, it shall be the duty of the executor or the administrator thereof, as soon as he shall have completed and filed the inventory and appraisement in said estate to furnish the attorney general with the following written information and file a copy thereof, in the probate proceedings in said estate:

1. The names and addresses of the alien heirs, devisees and/or legatees in said estate;
2. The share, or proportionate share thereof of each of said alien heirs;
3. The appraised value of the entire estate.

**History:** En. Sec. 3, Ch. 104, L. 1939; am. Sec. 1, Ch. 30, L. 1951.

### Amendment

The 1951 amendment provided for the filing of names of alien heirs with the attorney general after inventory and appraisement instead of listing such heirs in the petition for letters and also in the petition for distribution. The amendment

also omitted those provisions of the section providing for the disposition of property which would have gone to such heirs. Present provisions for the disposition of such property are found in sec. 91-520.

### Repealing Clause

Section 2 of Ch. 30, L. 1951 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 6—PROBATE PROCEEDINGS—PUBLIC ADMINISTRATOR

### 91-601. (9990) Duties of public administrator.

#### References

Cited or applied in the dissenting opinion in *State ex rel. Hill v. District*

Court, 126 M 1, 242 P 2d 850, 854, 31 ALR 2d 749.

## CHAPTER 7—PROBATE PROCEEDINGS—GENERAL JURISDICTION OF DISTRICT COURT

**91-701. (10018) Jurisdiction of the court over the estate, etc.****“Domiciliary” and “Ancillary” Administration**

Administration in the state where the person was domiciled at the time of his death is deemed the principal or primary administration and is ordinarily termed “domiciliary administration,” while administration in a state other than where the decedent was domiciled at the time of his death but wherein the decedent left property is termed “ancillary” or “auxiliary” administration. In *re Smith’s Estate*, 126 M 558, 255 P 2d 687, 691.

**Operation and Effect**

Where, at the time of decedent’s death his alleged will, wherever executed was a domestic document in Montana wherein decedent was domiciled and left estate and not a foreign writing of some person residing and domiciled in some other state or foreign country, the filing, offering for probate and proving of such domestic will is governed by the provisions of this section, sections 91-801 to 91-812, 91-901 to 91-907 and not by the provisions of sections 91-1001, 91-1002 and 91-1003. In *re Smith’s Estate*, 126 M 558, 255 P 2d 687, 691.

**Original Probate**

Under the provisions of subdivision 1

of this section it is the declared public policy of this jurisdiction that the first, the primary or the original probate of a will should be made in the county in which the decedent was a resident and domiciled at the time of his death. In *re Smith’s Estate*, 126 M 558, 255 P 2d 687, 691.

**Residence**

In the enactment of subdivision 1 of this section the legislature has treated “residence” as synonymous with “domicile.” In *re Smith’s Estate*, 126 M 558, 255 P 2d 687, 691.

**Residence of Decedent**

Where decedent was a life long resident of one county but went to another county to a rest home since no similar care could be obtained in his home county and other evidence disclosed that he did not intend to change his residence, he retained his legal residence in his home county. In *re Ingersol’s Estate*, 128 M 230, 272 P 2d 1003.

**References**

Cited or applied in *In re Bargler’s Estate*, 129 M 491, 289 P 2d 680, 681; *State v. District Court*, 131 M 502, 312 P 2d 119, 122.

## CHAPTER 8—PROBATE PROCEEDINGS—PROBATE OF WILLS

**Section 91-811. Proof required when no contest.****91-801. (10020) Custodian of will to deliver same, to whom—penalty.****References**

Cited or applied in *In re Smith’s Estate*, 126 M 558, 255 P 2d 687, 691; *State*

*ex rel. Reid v. District Court*, 126 M 586, 256 P 2d 546, 551 (dissenting opinion).

**91-802. (10021) Who may petition for probate of will.****References**

Cited or applied in the dissenting opinion in *State ex rel. Hill v. District Court*,

126 M 1, 242 P 2d 850, 852, 31 ALR 2d 749; In *re Minder’s Estate*, 128 M 1, 270 P 2d 404, 410, 45 ALR 2d 898.

**91-803. (10022) Contents of petition.****References**

Cited in *In re Minder’s Estate*, 128 M 1, 270 P 2d 404, 412, 45 ALR 2d 898.

**91-804. (10023) When executor forfeits right to letters.****Construction**

This section is neither mandatory nor jurisdictional. It does not compel action. It merely permits action and then only in a case coming squarely within its provisions.

In *re Minder’s Estate*, 128 M 1, 270 P 2d 404, 408, 45 ALR 2d 898.

Mere failure of the executor to file his petition for probate and for letters for 30 days or more after learning of testator’s death will not of and in itself effect



a forfeiture of the named executor's right to letters testamentary, for, if and when good cause be shown for the delay, then and thereupon, the trial judge is divested of his authority to adjudge an involuntary or implied renunciation of the named executor's right to letters testamentary. In re Minder's Estate, 128 M 1, 270 P 2d 404, 408, 45 ALR 2d 898.

**Operation and Effect**

Good cause was shown for the delay of

**91-806. (10025) Notice of petition for probate—how given.**

**Operation and Effect**

Where the decedent was domiciled in Montana and left an estate, the statutory requirements for offering the will to probate, notice, and the opportunity to contest the purported will may not be circumvented and evaded by the simple device of first offering decedent's alleged will for probate in California, where decedent also left some property, and then returning to Montana, the state of decedent's residence and domicile, with an authenti-

cated copy of the probate proceedings had in California; and thereupon, without any notice whatever to the heirs, legatees, and devisees resident in Montana, obtaining an order admitting the alleged will to probate and granting letters of administration, merely upon the presentation of a petition therefor and the submission of the authenticated copy of the California proceedings. In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

**References**

Cited or applied in In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

**91-807. (10026) Heirs and named executors to be notified, how.**

**Operation and Effect**

Where the decedent was domiciled in Montana and left an estate, the statutory requirements for offering the will to probate, notice, and the opportunity to contest the purported will may not be circumvented and evaded by the simple device of first offering decedent's alleged will for probate in California, where decedent also left some property, and then returning to Montana, the state of decedent's residence and domicile, with an authenticated copy of the probate proceedings had in California and thereupon, without any notice

whatever to the heirs, legatees, and devisees resident in Montana, obtaining an order admitting the alleged will to probate and granting letters of administration, merely upon the presentation of a petition therefor and the submission of the authenticated copy of the California proceedings. In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

**References**

Cited in In re Hardy's Estate, 133 M 536, 326 P 2d 692.

**91-810. (10029) Who may appear and contest the will.**

**Executor of Prior Will Cannot Contest a Will**

The only persons authorized to contest a will are those who, but for the will, would succeed in some degree to the decedent's estate; therefore, an executor named in a prior will cannot contest a codicil naming a new person executor. State ex rel. Hill v. District Court, 126 M 1, 242 P 2d 850, 31 ALR 2d 749 (the court was closely divided on this, however, see the dissenting opinion of two judges, 126 M 1, 242 P 2d 850, 852.)

**References**

Cited or applied in In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

Right to contest will or attack its validity. 28 ALR 2d 116.

Right of executor or administrator to contest will or codicil of his decedent. 31 ALR 2d 756.

**91-811. (10030) Proof required when no contest.** If no person appears to contest the probate of a will, the court or judge may admit the same to probate:

(a) On the testimony of one of the subscribing witnesses only if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

(b) If it appears at the time of the filing of the petition to have the will proved that none of the subscribing witnesses reside in the county, and that the deposition of one of the witnesses to the will can be taken elsewhere, the court may direct it to be taken and may authorize a photographic copy of the will to be made and presented to such witness on his examination, who may be asked the same questions with respect to it and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present.

(c) If none of the subscribing witnesses reside in the county at the time appointed for proving the will, and it is made to appear to the court that the execution of the will cannot be proven under either of the foregoing subdivisions of this section, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of such execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

**History:** En. Sec. 18, p. 244, L. 1877; re-en. Sec. 18, 2nd Div. Rev. Stat. 1879; re-en. Sec. 18, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2330, C. Civ. Proc. 1895; re-en. Sec. 7395, Rev. C. 1907; re-en. Sec. 10030, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1925; amd. Sec. 1, Ch. 71, L. 1949. Cal. C. Civ. Proc. Sec. 1308.

#### **Amendment**

The 1949 amendment substituted "of the filing of the petition to have the will proved" in subdivision (b) for "fixed for the hearing."

#### **Repealing Clause**

Section 2 of Ch. 71, L. 1949 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 71, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

#### **References**

Cited or applied in *In re Smith's Estate*, 126 M 558, 255 P 2d 687, 692.

## **CHAPTER 9—PROBATE PROCEEDINGS—CONTESTING PROBATE OF WILLS**

### **91-901. (10032) Contestant to file grounds of contest, etc.**

#### **Estoppel**

Although estoppel usually must be specially pleaded, in a will contest where grounds for objection to probate of will were that deceased had married after the execution of the will, and petitioner answered alleging the last marriage was void by reason of a previous marriage which had not been dissolved, no further pleading would be permissible under this section and therefore evidence of estoppel to question the validity of the divorce and second marriage was properly admissible. *In re Anderson's Estate*, 121 M 515, 194 P 2d 621, 626.

#### **Operation and Effect**

In a will contest the contestant has the burden of proof and ordinarily should be the one to first submit proof. But where the proponent submitted his proof first and covered the entire field there would be no purpose in going over the same ground a second time. *In re Swords' Estate*, 129 M 165, 284 P 2d 674, 679.

#### **References**

Cited or applied in *In re Smith's Estate*, 126 M 558, 255 P 2d 687, 692; *State ex rel. Reid v. District Court*, 126 M 586, 256 P 2d 546, 550.

## **CHAPTER 10—PROBATE OF FOREIGN WILLS**

Section 91-1001. Wills proved in other states to be recorded, when and where.

**91-1001. (10039) Wills proved in other states to be recorded, when and where.** All wills duly proved and allowed in any other of the United States, or in any foreign country or state, may be allowed and recorded in the district court of any county in which the testator shall have left any

estate, provided however, that the primary probate of any will of any testator who, at the time of his death, was a resident of Montana and left estate therein, must be had in the county of his residence in this state, and may not be proved and admitted as a foreign will.

**History:** En. Sec. 27, p. 246, L. 1877; re-en. Sec. 27, 2nd Div. Rev. Stat. 1879; re-en. Sec. 27, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2350, C. Civ. Proc. 1895; re-en. Sec. 7404, Rev. C. 1907; re-en. Sec. 10039, R. C. M. 1921; amd. Sec. 1, Ch. 44, L. 1939; amd. Sec. 1, Ch. 56, L. 1953. Cal. C. Civ. Proc. Sec. 1322.

#### Amendment

The 1953 amendment deleted the words "or shall have been a resident at the time of his death" which appeared after the words "testator shall have left any estate" and added the proviso.

#### Repealing Clause

Section 2 of Ch. 56, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 56, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

#### Operation and Effect

Where at the time of decedent's death his alleged will was a domestic document in Montana wherein decedent was domiciled and left estate and not a foreign writing of some person residing and domiciled in some other state or foreign country, the filing, offering for probate and proving of such domestic will is governed by the provisions of sections 91-701, 91-801 to 91-812, 91-901 to 91-907 and not by the provisions of sections 91-1001, 91-1002 and 91-1003. In re Smith's Estate, 126 M 558, 255 P 2d 687, 691.

### 91-1002. (10040) Proceedings on production of foreign will.

#### Operation and Effect

Where the decedent was domiciled in Montana and left an estate, the statutory requirements prescribed in Chapter 8 of Title 91, relating to the offering of the will to probate, notice, and the opportunity to contest, may not be circumvented and evaded by the simple device of first offering decedent's alleged will for probate in California, where decedent also left some property, and then returning to Montana, the state of decedent's residence

and domicile, with an authenticated copy of the probate proceedings had in California and thereupon, without any notice whatever to the heirs, legatees, and devisees resident in Montana, obtaining an order admitting the alleged will to probate and granting letters of administration, merely upon the presentation of a petition therefor and the submission of the authenticated copy of the California proceedings. In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

### 91-1003. (10041) Hearing proofs of probate for foreign will.

#### References

Cited or applied in In re Gift's Estate,

125 M 95, 232 P 2d 328, 332; In re Smith's Estate, 126 M 558, 255 P 2d 687, 691.

## CHAPTER 11—PROBATE PROCEEDINGS—CONTESTING WILLS AFTER PROBATE

### 91-1101. (10042) The probate may be contested within one year.

#### References

Cited or applied in State ex rel. Hill

v. District Court, 126 M 1, 242 P 2d 850, 851, 31 ALR 2d 749; In re Hardy's Estate, 133 M 536, 326 P 2d 692.

### 91-1102. (10043) Citation to be issued to parties interested.

#### Parties Entitled to Notice

This section seems to indicate that heirs not residing within the state are not en-

titled to notice of a contest. In re Hardy's Estate, 133 M 536, 326 P 2d 692.

### 91-1104. (10045) Petitions to revoke probate of will tried by jury, etc.

#### References

Cited or applied in In re Hardy's Estate, 133 M 443, 325 P 2d 694.



**91-1105. (10046) On revocation of probate, powers of executor, etc.****Acts in Good Faith**

Action of administrator under the will in resisting revocation of probate was not in good faith so as to exempt him from payment of costs under section 91-1106 where one of the grounds for revocation of probate was undue influence by the administrator and where the probate was re-

voked for this reason. In re Hardy's Estate, 133 M 443, 325 P 2d 694.

**Letters of Administration**

Upon revocation of probate for undue influence, letters of administration granted on the probate must be revoked. In re Hardy's Estate, 133 M 443, 325 P 2d 694.

**91-1106. (10047) Costs and expenses—by whom paid.****Operation and Effect**

When probate is revoked on the ground of undue influence by the person who resisted revocation, the costs must be paid by that party even though he was adminis-

trator under the will and would not, under section 91-1105, be liable for good faith acts during his administration. In re Hardy's Estate, 133 M 443, 325 P 2d 694.

## CHAPTER 13—PROBATE PROCEEDINGS—EXECUTORS AND ADMINISTRATORS —ISSUANCE OF LETTERS TESTAMENTARY AND OF ADMINISTRATION

**91-1301. (10056) To whom letters on proved will to issue.****Designation of Person to Name Executor**

Where testatrix provided that "the nominee of the Roman Catholic Bishop" act as executor the court was required to appoint the person nominated by such bishop as executor and could not appoint

another as administrator with the will annexed. In re Effertz' Estate, 123 M 45, 207 P 2d 1151, 1154, 11 ALR 2d 1278.

**References**

Cited or applied in In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

## CHAPTER 14—PERSONS TO WHOM AND ORDER IN WHICH LETTERS OF ADMINISTRATION ARE GRANTED

**91-1401. (10068) Order of persons entitled to administer, etc.****Disqualification**

Assertion of claim to property, by surviving wife, which others contend belong to the estate does not render her or her nominee incompetent. In re Adkin's Estate, 133 M 27, 319 P 2d 512, 513.

The fact that the nominee of the widow may assert a claim against the estate is no ground of disqualification. In re Adkin's Estate, 133 M 27, 319 P 2d 512, 513.

When litigation arises between the widow and the estate or its creditors, and the estate is insolvent then her interests become so antagonistic to the estate and the creditors that she ought not be appointed executrix or administratrix. In re Adkin's Estate, 133 M 27, 319 P 2d 512, 514.

Where widow was disqualified from serving as executrix by reason of asserting rights adverse to the estate which were involved in litigation, she could not still appoint some one else to serve. In re Adkin's Estate, 133 M 27, 319 P 2d 512, 514.

**Failure to Apply—Effect**

The fact that son made no application for letters of administration of estate of

deceased mother until after application of public administrator, did not work a forfeiture of his right to be appointed where he was laboring under the impression there was no estate to administer. In re Wilcox' Estate, 122 M 290, 201 P 2d 989, 991.

Where persons entitled to preference in appointment as administrator fail to file a petition until letters have been issued to another and have not availed themselves of the provisions of section 91-1504, they cannot have the letters revoked except under the provisions of section 91-1601 or sections 91-2101 to 91-2105. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

**Operation and Effect**

This section is exclusive and mandatory and if person is properly qualified to administer estate the order of priority cannot be deviated from by the court. In re Wilcox' Estate, 122 M 290, 201 P 2d 989, 990.

**References**

Cited or applied in the dissenting opin-

ion in State ex rel. Hill v. District Court, 126 M 1, 242 P 2d 850, 854, 31 ALR 2d

749. In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1074.

#### **91-1402. (10069) Preference of persons equally entitled.**

##### **Discretion of Court**

Court did not abuse discretion in appointing daughter as administratrix of estate of deceased mother and denying petition of son for letters of administration where entire estate of deceased consisted of judgment rendered against son which

was wholly unpaid at the time of the hearing on the petitions. In re Joy's Estate, — M —, 328 P 2d 127, 128.

##### **References**

Cited or applied in In re Hanson's Estate, 128 M 270, 273 P 2d 103, 104.

#### **91-1405. (10072) Who are incompetent to act as administrators.**

##### **Cross-Reference**

See note to sec. 91-1509. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

##### **Assertion of Claim to Property**

Where a person dies without a will the property passes to the heirs immediately subject to administration, therefore the fact that a person claims to be the owner

of all the property of the estate of his deceased mother does not affect his statutory right to administer the estate. In re Wilcox' Estate, 122 M 290, 201 P 2d 989, 991.

##### **References**

Cited or applied in In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

### **CHAPTER 15—PETITION FOR LETTERS OF ADMINISTRATION AND ACTION THEREON**

#### **91-1504. (10077) Contesting application.**

##### **References**

Cited or applied in In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

Adverse interest or position as disqualification for appointment as personal representative. 18 ALR 2d 633.

#### **91-1509. (10082) Letters may be granted to others than those entitled.**

##### **Revocation of Letters**

Where creditor of decedent had been appointed as administratrix, the nephews

and nieces could not apply for the revocation of the letters. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

### **CHAPTER 16—PROCEEDINGS FOR REVOCATION OF LETTERS OF ADMINISTRATION**

#### **91-1601. (10083) Revocation of letters of administration.**

##### **Cross-Reference**

See note to sec. 91-1509. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

### **CHAPTER 17—OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS**

Section 91-1723. Cost of procuring bonds.

**91-1723. (10106) Cost of procuring bonds.** Any receiver, assignee, guardian, trustee, committee, executor, administrator, curator, or other fiduciary required by law, or the order of any court or the judge thereof, to give a bond or other obligation as such, may include, as a part of the lawful expense of executing his trust, such reasonable sum paid a company authorized under the laws of this state to be or become surety on any such bond, for becoming his surety on such bond or obligation, as may be allowed by the court in which, or a judge before whom, he is required to

account, not exceeding the sum determined by the rate established for the same or comparable bonds or obligations by a nationally recognized rating bureau licensed in this state; and in all actions and proceedings the party entitled to recover costs therein shall be allowed and may tax and recover such sum paid such company for executing any bond, recognizance, undertaking, stipulation, or other obligation, not exceeding, however, the sum determined by the rate established therefor by a nationally recognized rating bureau licensed in this state.

**History:** En. Sec. 1, Ch. 78, L. 1903; re-en. Sec. 7723, Rev. C. 1907; re-en, Sec. 10106, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1955.

#### Amendment

The 1955 amendment substituted the words "the sum determined by the rate established for the same or comparable bonds or obligations by a nationally recognized rating bureau licensed in this state" for the words "one-half of one per cent per annum on the amount of such bond"; deleted the word "therein" which appeared between the words "obligation" and "not" and substituted the words "the sum determined by the rate established

therefor by a nationally recognized rating bureau licensed in this state" for the words "one-half of one per cent on the amount of such bond, recognizance, undertaking, stipulation, or other obligation, during each year same has been in force."

#### Repealing Clause

Section 2 of Ch. 184, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 184, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

## CHAPTER 20—DISQUALIFICATION OF JUDGE AND TRANSFER OF ADMINISTRATION

### 91-2001. (10120) Disqualification of judges.

#### Operation and Effect

There is no case brought to our attention that holds that when a judge is disqualified for imputed bias and prejudice in a probate matter, he must act under section 91-2001 in calling the nearest district judge to preside in the matter. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1078.

This section in substance and effect disqualifies a judge when he is interested in the estate or has served as attorney for

an interested party. It has nothing to do with disqualification for imputed bias or prejudice. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1078.

#### References

Cited or applied in *McLeod v. McLeod*, 126 M 32, 243 P 2d 321, 323; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 694; State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 548.

### 91-2002. (10121) Transfer of proceedings.

#### References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693,

694; State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 548.

## CHAPTER 21—REMOVAL AND SUSPENSION OF EXECUTORS AND ADMINISTRATORS

### 91-2101. (10124) Suspension of powers of executor.

#### Grounds for Revocation

In petition to remove administratrix appointed as creditor of decedent, allegations that such administratrix was not a creditor of the estate, that the heirs did

not wish to have her appointed and that she was hostile to them and incompetent did not aver facts bringing it within the provisions of this section. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.



**91-2103. (10126) Any party interested may appear on hearing.**

**Public Administrator**

The public administrator is not a person interested in the estate within the mean-

ing of this section. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

CHAPTER 22—INVENTORY AND APPRAISEMENT—POSSESSION OF ESTATE

**91-2201. (10129) Inventory to be returned, including the homestead.**

**References**

Cited in State ex rel. Anderson v. State

Board of Equalization, 133 M 8, 319 P 2d 221, 231.

**91-2202. (10130) Appointment and pay of appraisers.**

**Value of Closing Inventory**

Fair market value of closing inventory of estate of decedent for income tax purposes must be ascertained by appraisers

appointed under this section. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

**91-2210. (10138) Administrator and executor to possess real, etc.**

**Operation and Effect**

Fire insurance on buildings and insurance on an automobile taken out by the executor in favor of the estate was properly chargeable against the corpus rather than income. In re Lindhardt's Estate, 133 M 65, 320 P 2d 357, 364.

Improvements made by an executor pursuant to some ordinance or statute, or improvements where the property was in an untenable condition should be charged

to the corpus of the estate. In re Lindhardt's Estate, 133 M 65, 320 P 2d 357, 364.

**Repairs and Improvements on Property**

Executor need not get the approval of the court before making repairs and improvements, but, in the absence of approval, the burden is upon him to prove that the expenditures were made according to law and that they were reasonable and necessary. In re Lindhardt's Estate, 133 M 65, 320 P 2d 357, 361.

CHAPTER 24—PROVISION FOR SUPPORT OF FAMILY

Section 91-2406. Estates not exceeding fifteen hundred dollars to go to widow or minor child or minor children—those not exceeding three thousand dollars to be summarily administered.

**91-2401. (10144) Widow and minor children may remain, etc.**

**Construction**

Widow's claim to family allowance is strongly favored in the law and statutes relating thereto will be liberally construed. In re Hall's Estate, 124 M 355, 224 P 2d 138, 140.

**Daughter—Loss of Right to Allowance**

Daughter's right to family allowance became lost when she attained the age of eighteen years and upon her remarriage. In re Hall's Estate, 124 M 355, 224 P 2d 138, 140.

**Disposition of Allowance as Between Widow and Daughter**

Where district court made order for

family allowance to both widow and daughter by previous marriage but such payments were discontinued because of insufficient funds in estate, it was proper, where funds thereafter came into estate, to permit payment to widow on amount owing on family allowance so ordered where she was in need and still unmarried, but to deny any share to daughter where she was then over the age of eighteen and married. In re Hall's Estate, 124 M 355, 224 P 2d 138, 140.

**References**

Cited or applied in Shook v. Woodard, 129 M 519, 290 P 2d 750, 754.

**91-2404. (10147) Payment of allowance.**

**References**

Cited in In re Hall's Estate, 124 M 355, 224 P 2d 138, 139.

**91-2406.** (10149) **Estates not exceeding fifteen hundred dollars to go to widow or minor child or minor children—those not exceeding three thousand dollars to be summarily administered.** (1) If, on the return of the inventory of the estate of an intestate, it appears that the value of the whole estate does not exceed the sum of fifteen hundred dollars (\$1,500.00) the court or judge, by an order of distribution for that purpose, must distribute to the widow, if there be a widow, and if no widow, then to the minor child or minor children, if there is or are any, the whole of the estate, including the fee simple title to the real estate, if any, after the payment of the expenses of his last illness, funeral charges, and expenses of the administration, subject to whatever mortgages, liens or encumbrances there may be upon said estate at the time of the death of the deceased, and there must be no further proceedings in the administration, unless further estate be discovered.

(2) When it so appears that the value of the whole estate does not exceed the sum of three thousand dollars (\$3,000.00), and the expenses of his last illness, funeral charges, and expenses of administration, as well as all other debts of the estate have been paid, it is in the discretion of the court or judge, by an order for that purpose after notice to all persons interested to appear on a day fixed to show cause why such order should not be made, to distribute the whole of the estate to the widow, if there be a widow, and if no widow then to the minor child or minor children, in the same manner as above provided in the case where the value of the whole estate does not exceed the sum of fifteen hundred dollars (\$1,500.00) subject to whatever mortgages, liens or encumbrances there may be upon said estate at the time of the death of deceased. The notice to creditors must be given to present their claims within the time set by law for estates in excess of three thousand dollars (\$3,000.00), and those not so presented are barred as in other cases.

**History:** En. Sec. 138, p. 274, L. 1877; re-en. Sec. 138, 2nd Div. Rev. Stat. 1879; re-en. Sec. 138, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2585, C. Civ. Proc. 1895; re-en. Sec. 7513, Rev. C. 1907; re-en. Sec. 10149, R. C. M. 1921; amd. Sec. 1, Ch. 57, L. 1941; amd. Sec. 1, Ch. 14, L. 1951. Cal. C. Civ. Proc. Sec. 1469.

#### **Amendment**

The 1951 amendment changed the method of distribution. Prior to amendment the first paragraph provided that the judge "must assign, set over and distribute to the widow for the use and support of herself and minor child or minor children, if there be a widow and minor child or minor children, and if there be no minor children, then for the use and support of the widow, and if no widow, then to the minor child or minor children, if there is or are any, for his or their use and support, the whole of the estate, including the fee simple title to the real estate" and the second para-

graph contained similar provisions with regard to distribution except that the estate was required to be assigned in the discretion of the judge. The amendment also substituted the words "the time set by law for estates in excess of three thousand dollars (\$3,000.00)," for "four (4) months after the first publication of such notice," in the last sentence.

#### **Effective Date**

Section 2 of Ch. 14, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

#### **Cross-Reference**

Time for presenting claims against estate, sec. 91-2704.

#### **References**

Cited or applied in *Shook v. Woodard*, 129 M 519, 290 P 2d 750, 754.

## CHAPTER 26—DOWER—PROCEDURE TO ASSIGN

**91-2607. (10164) Appointment of commissioners, and oath.****References**

Cited or applied in *Clark v. Clark*, 126 M 9, 242 P 2d 992, 995.

**91-2608. (10165) Duties of commissioners, and reports.****References**

Cited or applied in *Clark v. Clark*, 126 M 9, 242 P 2d 992, 995.

**91-2610. (10167) Judgment for yearly value or gross sum.****References**

Cited or applied in *Clark v. Clark*, 126 M 9, 242 P 2d 992, 995.

## CHAPTER 27—CLAIMS AGAINST ESTATE

Section 91-2702. Time expressed in the notice.

**91-2702. (10171) Time expressed in the notice.** The time expressed in the notice must be four months after its first publication.

**History:** En. Sec. 148, p. 276, L. 1877; re-en. Sec. 148, 2nd Div. Rev. Stat. 1879; re-en. Sec. 148, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2601, C. Civ. Proc. 1895; re-en. Sec. 7523, Rev. C. 1907; re-en. Sec. 10171, R. C. M. 1921; amd. Sec. 1, Ch. 40, L. 1953. Cal. C. Civ. Proc. Sec. 1491.

read: "The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not."

**References**

Cited in *In re Minder's Estate*, 128 M 1, 270 P 2d 404, 412, 45 ALR 2d 898.

**Amendment**

This section before the 1953 amendment

**91-2704. (10173) Time within which claims against an estate, etc.****Application of Section**

This section does not apply to tax assessments of the state. State ex rel. An-

derson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

**91-2711. (10180) Claims must be presented before suit.****Application of Section**

This section does not apply to tax assessments of the state. State ex rel. An-

derson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

## CHAPTER 28—SALES OF PROPERTY OF ESTATE IN GENERAL—BORROWING MONEY—SALES OF CERTAIN PERSONAL PROPERTY

**91-2803. (10197) No sales valid except by order of district court.****Confirmation of Sale—Necessity**

An order of sale standing alone is not sufficient to pass title from the heirs to a purchaser, but there must also be a confirmation of the sale as a condition precedent to the passing of title. *Larson v. Whitmer*, 124 M 399, 224 P 2d 983, 986.

**Operation and Effect**

The statute provides the only method by which the heirs may be divested of title to their property in the process of administering the estate and purchasers from an administrator are bound to take notice of these statutory requirements. *Larson v. Whitmer*, 124 M 399, 224 P 2d 983, 986.



**CHAPTER 30—SALES OF REAL ESTATE AND CONTRACTS  
FOR PURCHASE OF LAND**

- Section 91-3001. Executor or administrator may sell property, when.  
 91-3002. Verified petition for sale—what it may contain and to what it may refer.  
 91-3003. Order directing interested persons to appear.  
 91-3013. Private sale of real estate, how made and notice—bids, when and how received.

**91-3001. (10210) Executor or administrator may sell property, when.**

When a sale of the property is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies; or when it appears to the satisfaction of the court that is for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, that the real estate, or some part thereof, be sold, or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all heirs petition for such sale, the executor or administrator may sell any real as well as personal property of the estate, upon the order of the court or judge; and an application for the sale of real property may also embrace the sale of personal property.

**History:** En. Sec. 186, p. 288, L. 1877; re-en. Sec. 186, 2nd Div. Rev. Stat. 1879; re-en. Sec. 186, 2nd Div. Comp. Stat. 1887; amd. Sec. 2670, C. Civ. Proc. 1895; re-en. Sec. 7561, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1915; re-en. Sec. 10210, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1949. Cal. C. Civ. Proc. Sec. 1536.

“or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all heirs petition for such sale.”

Implied power of executor or testamentary trustee to sell real estate. 23 ALR 2d 1000.

**Amendment**

The 1949 amendment inserted the words

**91-3002. (10211) Verified petition for sale—what it may contain and to what it may refer.** To obtain such order for the sale of real property, he must present a verified petition to the court or judge, setting forth the amount of personal property that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force one year; the debts, expenses, and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner; and if said order for sale of real estate is petitioned for on the ground that it is for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all the heirs petition for such sale, that a sale be made, the petition, in addition to the foregoing facts, must set forth in

what way an advantage or benefit would accrue to the estate, and those interested therein, by such sale. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the order.

**History:** En. Sec. 187, p. 289, L. 1877; re-en. Sec. 187, 2nd Div. Rev. Stat. 1879; re-en. Sec. 187, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2671, C. Civ. Proc. 1895; re-en. Sec. 7562, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1915; re-en. Sec. 10211, R. C. M. 1921; amd. Sec. 2, Ch. 112, L. 1949. Cal. C. Civ. Proc. Sec. 1537.

#### Amendment

The 1949 amendment inserted the words "or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all the heirs petition for such sale."

**91-3003. (10212) Order directing interested persons to appear.** If it appears to the court or judge, from such petition, that it is necessary, or that it would be for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all the heirs petition for such sale, to sell the whole or some portion of the real estate, for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed, and an order thereupon made, directing all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than fifteen [15], nor more than thirty [30] days from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

**History:** En. Sec. 188, p. 289, L. 1877; re-en. Sec. 188, 2nd Div. Rev. Stat. 1879; re-en. Sec. 188, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2672, C. Civ. Proc. 1895; re-en. Sec. 7563, Rev. C. 1907; amd. Sec. 3, Ch. 3, L. 1915; re-en. Sec. 10212, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1927; amd. Sec. 3, Ch. 112, L. 1949. Cal. C. Civ. Proc. Sec. 1538.

"or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all the heirs petition for such sale."

#### Repealing Clause

Section 4 of Ch. 112, L. 1949 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1949 amendment inserted the words

### **91-3004. (10213) Service and publication of order.**

#### **Irregularity Not Attacked in Collateral Proceeding**

Although publication of notice of sale of real estate did not comply with the provisions of the statute, where jurisdiction had

attached, the irregularity could not be attacked in a collateral proceeding. *Haugan v. Yale Oil Corp.*, 124 M 1, 217 P 2d 1084, 1086.

**91-3013. (10222) Private sale of real estate, how made and notice—bids, when and how received.** When sale of real estate is ordered to be made at private sale, notice of the same must be posted in three (3) of the most public places in the county in which the land is situated, such notice to be posted at least ten (10) days before the date of sale. Such

notice shall be published in a newspaper if there be one printed in the same county, if none, then in such as the court or judge may direct, once a week for two (2) consecutive weeks. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received, and the lands and tenements to be sold must be described therein with common certainty. The day fixed for sale must be within ten (10) days from the day of the last publication of notice, and the sale must not be made before the day so fixed, but must be made within six (6) months thereafter. The bids or offers must be in writing and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the clerk of court to which the return of sale must be made, at any time after the first publication of the notice, and before the making of the sale. If it be shown that it will be for the best interests of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than ten [10], in which case the notice of sale and the sale may be made to correspond with such order.

**History:** En. Sec. 198, p. 292, L. 1877; re-en. Sec. 198, 2nd Div. Rev. Stat. 1879; re-en. Sec. 198, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2682, C. Civ. Proc. 1895; re-en. Sec. 7573, Rev. C. 1907; re-en. Sec. 10222, R. C. M. 1921; amd. Sec. 1, Ch. 170, L. 1951. Cal. C. Civ. Proc. Sec. 1549.

#### **Amendment**

The 1951 amendment inserted the provision that the notice must be posted at least ten days before date of sale, provided that the newspaper publication should be "once a week for two (2) consecutive weeks" instead of "two weeks successively next before the day on or after which the sale is to be made" provided that the date of sale must be within ten days from day of last publication instead of at least fifteen days from first publication, substituted the provision that the court might fix the time for sale on or after a day less than ten for a provision that the court might fix a day less than fifteen but

not less than eight days after first publication and made other minor changes in wording.

#### **Repealing Clause**

Section 2 of Ch. 170, L. 1951 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 170, L. 1951 provided the act should be in effect on and after its passage and approval. Approved March 1, 1951.

#### **Irregularity Not Attacked in Collateral Proceeding**

Although publication of notice of sale of real estate did not comply with the provisions of the statute, where jurisdiction had attached, the irregularity could not be attacked in a collateral proceeding. *Haugan v. Yale Oil Corp.*, 124 M 1, 217 P 2d 1084, 1086.

### **91-3016. (10225) Return of proceedings—notice of hearing, etc.**

#### **Vacation of Sale on Objection of Heirs**

Where sale of land was made by oral agreement with administrator without confirmation of court, and thereafter to clear title a petition for sale of land was filed and bids were received, one by the purchaser for the amount so paid and one from another party for more than twice the

amount bid by the purchaser, and sale was confirmed in such purchaser, such sale and judgment of confirmation were void on objection of the heirs although no fraud was practiced, the heirs not being parties to the proceeding. *Larson v. Whitmer*, 124 M 399, 224 P 2d 983, 986.

## **CHAPTER 31—MORTGAGING AND LEASING REAL ESTATE**

Section 91-3102. Manner of obtaining authority to mortgage—petition, contents and filing.

91-3108. Leasing—procedure to procure order—provisions and terms—execution—effect.



**91-3102. (10250) Manner of obtaining authority to mortgage—petition, contents and filing.** To obtain an order to mortgage such realty, the proceedings to be taken and the effect thereof must be as follows:

The executor, administrator, or any person interested in the estate may file a verified petition showing: The particular purpose or purposes for which it is proposed to make the mortgage, which shall be either to pay the debts, legacies, or charges of administration, or to pay, reduce, extend, or renew some lien or mortgage already subsisting on said realty, or some part thereof, and to pay, reduce, extend or renew the payment of the promissory note secured by such lien or mortgage; a statement of the debts, legacies, charges of administration, liens, or mortgages to be paid, reduced, extended, or renewed, as the case may be; the advantage that may accrue to the estate from raising the required money by mortgage, or providing for the payment, reduction, extension, or renewal of the subsisting liens, or mortgages, as the case may be; the amount to be raised, with a general description of the property proposed to be mortgaged; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner.

**History:** En. Sec. 2721, C. Civ. Proc. 1895; re-en. Sec. 7601, Rev. C. 1907; re-en. Sec. 10250, R. C. M. 1921; amd. Sec. 1, Ch. 62, L. 1955. Cal. C. Civ. Proc. Sec. 1578.

payment of the promissory note secured by such lien or mortgage" which appear after the words "or some part thereof" in the second paragraph.

#### Repealing Clause

#### Amendment

The 1955 amendment inserted the words "and to pay, reduce, extend or renew the

Section 2 of Ch. 62, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**91-3108. (10256) Leasing—procedure to procure order—provisions and terms—execution—effect.** To obtain an order to lease the realty, the proceedings to be taken and the effect thereof shall be as follows:

1. The executor, administrator, or any person interested in the estate, may file a verified petition showing: The advantage or advantages that may accrue to the estate from giving a lease; a general description of the property proposed to be leased; the term, rental, and general conditions of the proposed lease; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner.

2. Upon filing such petition an order must be made by the court or judge, requiring all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than two nor more than four weeks thereafter, then and there to show cause why the realty (briefly indicating it) should not be leased for the period (stating it), at the rental mentioned in the petition (stating it), and referring to the petition on file for further particulars.

3. The order to show cause must be personally served on the persons residing in the county interested in the estate, at least ten days before the time appointed for hearing the petition, or be published for two successive weeks in a newspaper of general circulation published in the county.

4. At the time and place appointed in the order to show cause, or such other time and place to which the hearing may be postponed, the court or judge having first received satisfactory proof of personal service or

publication of the order to show cause, must proceed to hear the petition, and any objections that may be filed or presented thereto. Upon such hearing, witnesses may be compelled to attend and testify in the same manner and with like effect as in other cases, and the court or judge may, in its or his discretion, appoint one or more, not exceeding three, disinterested persons to appraise the rental value of the premises, and direct that a reasonable compensation for their services, not to exceed five dollars per day, be paid by the estate. If, after a full hearing, the court or judge is satisfied that it will be for the advantage of the estate to lease the whole or any portion of the real estate, an order must be made authorizing, empowering, and directing the executor or administrator to make such lease. The order may prescribe the minimum rental to be received for the premises, and the period of the lease, which must in no case be longer than for ten years, except that a lease or contract providing for the exploration of the premises for oil, gas or hydrocarbons may provide for a term of ten years and for as long thereafter as oil, gas or hydrocarbons shall be produced in commercial quantities, and may prescribe the other terms and conditions of such lease.

5. After the making of the order to lease, the executor or administrator must execute, acknowledge, and deliver a lease of the premises, for the rent, and period, and with the conditions specified in the order, such lease before it shall become effective shall be approved by the court or judge thereof before delivery, setting forth in the lease that it is made by authority of the order, and giving the date of such order. A certified copy of the order shall be recorded in the office of the county clerk of every county in which the leased land, or any portion thereof, lies.

6. Every lease so made shall be effectual to demise and let, at the rent, for the term, and upon the conditions prescribed therein, the premises described therein. Jurisdiction of the court to administer the decedent's estate shall be effectual to vest such court and judge with jurisdiction to make the order for the lease, and such jurisdiction shall conclusively inure to the benefit of the lessee, his heirs and assigns. No omission, error, or irregularity in the proceedings impairs or invalidates the same, or the lease made in pursuance thereof.

**History:** En. Sec. 2722, C. Civ. Proc. 1895; re-en. Sec. 7602, Rev. C. 1907; re-en. Sec. 10256, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1923; amd. Sec. 1, Ch. 156, L. 1953. Cal. C. Civ. Proc. Sec. 1579.

five to ten years and substituted "and" for "or" which appears before the words "for as long thereafter" in the last sentence of subdivision 4.

#### Amendment

The 1953 amendment raised the term for which realty may be leased from

#### Repealing Clause

Section 2 of Ch. 156, Laws 1953 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 32—GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

### 91-3201. (10257) Executors or administrators to take possession, etc.

#### Operation and Effect

It is the right and duty of executors and administrators to retain a legacy or distributive share from a debtor to the estate and apply it to the indebtedness,

and this right is superior to the claim of a creditor of the legatee, even though such claim has been reduced to judgment. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1088.

**91-3205. (10261) Surviving partner to settle up business, etc.****Inheritance Tax**

Real property and tangible personal property retains its status as such upon the death of a partner and is not exempt from inheritance tax under section 91-4413 as intangible property. In re Perry's Estate, 121 M 280, 192 P 2d 532, 537.

been settled the partnership property is not property of the estate of the deceased party to be administered as such. In re Perry's Estate, 121 M 280, 192 P 2d 532, 537.

**References**

Cited or applied in *McNaught v. Weyh*, 128 M 418, 276 P 2d 491, 495.

**When Partnership Property Becomes Part of Estate**

Until the affairs of the partnership have

**91-3209. (10265) Recovery of property fraudulently disposed of, etc.****Application of Section**

This section is not repealed by the Uniform Fraudulent Conveyance Act (29-101

to 29-113). In re Adkin's Estate, 133 M 27, 319 P 2d 512, 515.

**91-3210. (10266) When executor or administrator to sue, as provided, etc.****Application of Section**

This section is not repealed by the Uniform Fraudulent Conveyance Act (29-101

to 29-113). In re Adkin's Estate, 133 M 27, 319 P 2d 512, 515.

## CHAPTER 33—CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS

**91-3312. (10279) Validation of sales—curative deeds.****Operation and Effect**

Where jurisdiction has attached, an irregularity in a subsequent proceeding cannot be assailed except upon appeal or a

direct action of annulment. *Haugan v. Yale Oil Corp.*, 124 M 1, 217 P 2d 1084, 1087.

## CHAPTER 34—LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS

**91-3405. (10285) Expenses allowed executor or administrator, etc.****Attorney's Fees**

Attorney fees which are for services rendered in defending actions for the removal of the administrator are not chargeable against the estate because they are not for the benefit of the estate but rather are for the interest and benefit of the administrator personally. In re Ruane's Estate, 125 M 204, 233 P 2d 400, 403.

an abuse of discretion for the court to disallow storage charged for a car for \$123.75 when the car had an appraised value of \$75 and was later sold for \$30. In re Ruane's Estate, 125 M 204, 233 P 2d 400, 403.

**Necessary Expenses**

Traveling expenses incurred by an administrator will not be allowed unless it is shown that such travel was necessary for the care, management, or settlement of the estate and that it was necessary to make the trips in question rather than use the mail. In re Ruane's Estate, 125 M 204, 233 P 2d 400, 402.

Executor need not get the approval of the court before making repairs and improvements, but, in the absence of approval, the burden is upon him to prove that the expenditures were made according to law and that they were reasonable and necessary. In re Lindhardt's Estate, 133 M 65, 320 P 2d 357, 361.

In his accounting, the burden is on the executor to establish his right to each item of expense. In re Lindhardt's Estate, 133 M 65, 320 P 2d 357, 361.

**References**

The administrator and court are bound to "exercise the highest diligence and to limit expenditures with a wise prudence and economy," therefore it is not

Cited in *In re Sikorski's Estate*, 127 M 563, 268 P 2d 395, 399; *Guardianship of Reid*, 128 M 197, 271 P 2d 1031, 1037.



**91-3407. (10287) Compensation of executors and administrators.****Executor Guilty of Delay in Administering Estate**

Where an executor was guilty of delay in administering an estate he was not chargeable with interest on the cash due legatees and devisees. In re Lindhardt's Estate, 133 M 65, 320 P 2d 357, 365.

**Operation and Effect**

It was proper for the court not to rule on the allowance or disallowance of executor and attorney fees until all the facts were before it. In re Lindhardt's Estate, 133 M 65, 320 P 2d 357, 365.

**What is Included in Estate Upon Which Compensation is Based**

Where the administratrix has expenses

of \$10 filing fee and \$4.82 for sheriff's fee for serving subpoenas in an action to defend her position as administratrix; these items when recovered in a cost bill in that action can not be credited to the estate as an asset and thus increase the assets of the estate on which to base compensation for services. In re Ruane's Estate, 125 M 204, 233 P 2d 400, 404, 405.

**References**

Cited in In re Sikorski's Estate, 127 M 563, 268 P 2d 395, 399; Guardianship of Reid, 128 M 197, 271 P 2d 1031, 1037.

## CHAPTER 35—ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS

**91-3501. (10288) Exhibit of receipts and disbursements, etc.****Account**

Where the court ordered the administrator to account, an "Affidavit of Report of Administrator" wherein the administrator sought to excuse his failure to close the estate is not what the statutes call for because it does not show the "amount of money received and expended by him"

and it does not justify the administrator's failure to account at all. State ex rel. Adamson v. District Court, 128 M 538, 279 P 2d 691, 693.

In his accounting, the burden is on the executor to establish his right to each item of expense. In re Lindhardt's Estate, 133 M 65, 320 P 2d 357, 361.

**91-3507. (10294) To render accounts after notice to creditors.****References**

Cited or applied in State ex rel. Adam-

son v. District Court, 128 M 538, 279 P 2d 691, 692.

**91-3512. (10299) Day of settlement to be appointed and notice thereof.****Cross-Reference**

See note to sec. 91-3513. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

**91-3513. (10300) When settlement is final, notice must so state, etc.****Postponement of Hearing on Final Account**

Where, after proper notice, administrator filed his final account and petition for final distribution, and after objections were filed postponed the hearing, no fur-

ther notice was required before approval of the supplemental account and order for distribution differing from that first proposed. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

**91-3514. (10301) Interested party may file exceptions to account.****Cross-Reference**

See note to sec. 91-3513. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

**References**

Cited or applied in State ex rel. Sanford v. District Court, 124 M 429, 225 P 2d 866, 867.

**91-3515. (10302) All matters may be contested by the heirs—hearing.****Cross-Reference**

See note to sec. 91-3513. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

**91-3516. (10303) Settlement of accounts to be conclusive, etc.****Cross-Reference**

See note to sec. 91-3513. *Harrison v. Cannon*, 122 M 318, 203 P 2d 978.

of estate, have judgment set aside on ground of fraud. *State ex rel. Sanford v. District Court*, 124 M 429, 225 P 2d 866.

**Court Loses Jurisdiction After Sixty Days**

In the absence of proper and timely challenge the court loses jurisdiction to grant any relief under the provisions of this section. *State ex rel. Sanford v. District Court*, 124 M 429, 225 P 2d 866, 868.

**Effect of Fraud**

Where proper notice was given of settlement of final account and petition for distribution of estate, heir or legatee could not, more than six months after settlement of final account and order for distribution

**When Order is Not Conclusive**

Where executors made an advance payment out of their personal funds to the legatee of a cash bequest and the petition for final distribution and final account did not show the advancement, and the decree of final settlement and distribution declared that the legatee was entitled to the bequest, such decree was not final and conclusive so as to prevent executors from claiming a debt due from the legatee, as against a judgment debtor of the legatee. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092.

## CHAPTER 36—DEBTS OF THE ESTATE—PAYMENT OF

**91-3604. (10310) Funeral expenses, expenses of last sickness, etc.****Family Allowance**

Administratrix was not required to pay family allowance when there were not suffi-

cient funds in the estate to pay same. In *re Hall's Estate*, 124 M 355, 224 P 2d 138, 139.

CHAPTER 38—DETERMINATION OF HEIRSHIP AND  
INTEREST IN ESTATE

Section 91-3801. Proceedings to determine heirship.  
91-3802. Appearance of parties.

**91-3801. (10324) Proceedings to determine heirship.** Any person claiming to be heir to the deceased, or entitled to the distribution in whole or in part of an estate may, at any time after the issuing of letters testamentary or of administration upon such estate, file a petition in the matter of such estate, praying the court or judge to ascertain and declare the rights of all persons to said estate, and all interests therein, and to whom distribution thereof should be made. Upon the filing of such petition, the court or judge must make an order directing service of notice to all persons interested in said estate, to appear and show cause, on a day to be therein named, not less than sixty [60] days nor more than four [4] months from the date of the making of such order, in which notice shall be set forth the name of the deceased, the name of the executor or administrator of said estate, the names of all persons who may have appeared claiming any interest in said estate, in the course of the administration of the same, up to the time of the making of said order, and such other persons as the court or judge may direct, including the state of Montana by service upon the attorney general, and also a description of the real estate whereof said deceased died seized or possessed so far as known, described with certainty to a common intent; and requiring said persons, and all persons named or not named having or claiming any interest in the estate of said deceased, at the time and place in said order specified, to appear and exhibit, as hereinafter provided, their respective claims of heirship, owner-

ship, or interest in said estate, to said court or judge, which notice shall be served in the same manner as a summons in a civil action; upon proof of which service, by affidavit or otherwise, to the satisfaction of the court or judge, the court or judge shall thereupon acquire jurisdiction to ascertain and determine the heirship, ownership, and interest of all parties in and to the property of said deceased, and such determination shall be final and conclusive in the administration of said estate, and of the title and ownership of said property, the court or judge must enter an order establishing proof of the service of such notice; if it shall appear to the satisfaction of the court or judge that no issue has been joined relative to heirship, then it shall not be necessary in such estate to file a complaint under the provisions of section 91-3802 and the court or judge shall thereupon enter a decree determining heirship, except in such estates in which nonresident alien heirs are entitled to a distributive share of the estate, in which event and before the entry of a decree determining heirship the court shall proceed to a hearing upon the determination of the question of reciprocity between the foreign country of which the nonresident alien heir is a resident and the United States as provided by section 91-520. Further, in all estates in which the decedent left a will, it shall be unnecessary to determine heirship but this shall not relieve any nonresident alien heirs, legatees and/or devisees from satisfactorily establishing their identity and proving that reciprocity exists between the country in which the nonresident alien legatee or devisee resides and the United States as provided under the provisions of section 91-520; provided, that whenever it appears to the satisfaction of the court or judge that such estate consists of personal property only, and upon application being made showing good reason therefor, the court or judge may, in its discretion, make an order directing service of said notice to all persons interested in said estate to be made by posting or publication, or both, for such shorter period as to the court or judge may appear proper and requisite.

**History:** En. Sec. 2840, C. Civ. Proc. 1895; re-en. Sec. 7670, Rev. C. 1907; amd. Sec. 1, Ch. 234, L. 1921; re-en. Sec. 10324, R. C. M. 1921; amd. Sec. 1, Ch. 28, L. 1951. Cal. C. Civ. Proc. Sec. 1664.

#### **Amendment**

The 1951 amendment inserted the words "including the state of Montana by service upon the attorney general" in the second sentence, added that part of the second sentence following the third semicolon and added that part of the third sentence preceding the semi-colon.

#### **Repealing Clause**

Section 2 of Ch. 28, L. 1951 repealed all acts and parts of acts in conflict therewith.

#### **Cross-Reference**

Uniform Simultaneous Death Act, secs. 91-423 to 91-430.

#### **Attorneys for Foreign Heirs**

Attorneys to represent foreign heirs, appointed by court, under section 91-4316,

where court decided that certain nonresident heirs did not have representation in the probate of an estate, had no right to petition for heirship proceedings under this section. In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 239.

#### **Jurisdiction of District Court**

Allowance of attorney for foreign heirs to file petition for heirship proceedings did not vest the court with requisite jurisdiction to proceed. In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 239.

Proceedings must be started by petition before the court acquires jurisdiction. In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 238.

A district court, when sitting in probate, while still a court of general jurisdiction, can only function and operate on probate matters by following the mandate laid down by the statute. In re Bell's Estate, — M —, 331 P 2d 517, 520.

#### **Notice of Proceedings**

Proceedings for determination of heir-



ship were void where only notice given was that of posting in three public places. In re Bell's Estate, — M —, 331 P 2d 517, 521.

#### Sufficiency of Petition

Petition is sufficient if it shows that the petitioner is an heir of the deceased or entitled to distribution. In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 238.

Attorneys for foreign heirs must have some written authority before they can proceed with the petition. In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 239.

#### When Determination of Heirship Necessary

Decree of distribution was void where not preceded by determination of heirship

as required by this section and sections 91-3802, 91-3803 and 91-3901. In re Bell's Estate, — M —, 331 P 2d 517, 521.

Purported decree of distribution, promulgated upon a hearing had December 19, 1940, which was the same day executrix's attorney successfully petitioned for an order to have himself appointed for non-resident heirs averring that there could be no determination of reciprocity as required by section 91-520 because of the war, affirmatively showed that no determination of heirship was had under the provisions of this section and sections 91-3802, 91-3803. In re Bell's Estate, — M —, 331 P 2d 517, 521.

#### References

Cited or applied in In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 659.

**91-3802. (10325) Appearance of parties.** All persons appearing within the time limited must file their written appearance in person or through their authorized attorney, such attorney filing at the same time written evidence of his authority to so appear, which written evidence must be in the English language, or if in a foreign language, the same must be accompanied by an English translation thereof, duly certified as correct by a United States consul, entry of which appearance shall be made in the minutes of the court and in the register of proceedings of said estate. And the court or judge shall, after the expiration of the time limited for appearing as aforesaid, enter an order adjudging the default of all persons for not appearing as aforesaid, who shall not have appeared as aforesaid. At any time within twenty [20] days after the date of the order of the court or judge establishing proof of service of such notice, any of such persons so appearing may file his complaint in the matter of the estate, setting forth the facts constituting his claim of heirship, ownership, or interest in said estate, with such reasonable particularity as the court or judge may require, and serve a copy of the same upon each of the parties or attorneys who shall have entered their written appearance as aforesaid, if such parties or such attorneys reside within the county; in all estates in which a nonresident alien heir, legatee and/or devisee has or may have an interest in a decedent's estate, the state of Montana shall be considered a necessary party and must be personally served by serving a copy of the complaint and order on the attorney general; and in case any of them do not reside within the county, then service of such copy of said complaint shall be made upon the clerk of said court for them, and the clerk shall forthwith mail the same to the address of such party or attorney as may have left with said clerk his post-office address. Such parties are allowed twenty [20] days after the service of the complaint, as aforesaid within which to plead thereto, and thereafter such proceedings shall be had upon such complaint as in this code provided in case of an ordinary civil action; and the issues of law and of fact arising in the proceeding shall be disposed of in like manner as issues of law and fact are herein provided to be disposed of in civil actions, with a like right to a motion for a new trial and appeal to the supreme court; and the provisions in this code contained, regulating

the mode of procedure for the trial of civil actions, the motion for a new trial of civil actions, statements on motion for a new trial, bills of exceptions and statements on appeal, as also in regard to undertakings on appeal, and the mode of taking and perfecting appeals, and the time within which such appeals shall be taken, shall be applicable thereto; provided, however, that all appeals herein must be taken within sixty [60] days from the date of the entry of the judgment or the order complained of.

**History:** En. Sec. 2841, C. Civ. Proc. 1895; re-en. Sec. 7671, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1913; re-en. Sec. 10325, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1951.

#### **Amendment**

The 1951 amendment inserted the clause between the first and second semicolons in the third sentence relating to nonresident alien heirs.

#### **Repealing Clause**

Section 2 of Ch. 29, L. 1951 repealed all acts and parts of acts in conflict therewith.

#### **Authority of Attorney**

Where written authority of attorneys was on file it was unnecessary that the attorneys refile their written authority on the day set for their appearance. In re Swayze's Estate, 120 M 546, 191 P 2d 322, 328.

Attorney for nonresident heirs could not appeal or participate in proceedings to determine heirship under section 91-3801 et seq. where he never filed any power of attorney from the foreign heirs. In re Bell's Estate, — M —, 331 P 2d 517, 521.

#### **References**

Cited in In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 235, 242.

### **91-3803. (10326) Trial and judgment.**

#### **Decree of Heirship**

A decree of heirship is conclusive on the rights of the parties affected by the decree, and has the same force and effect as does a final judgment. In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 235.

If from the judgment roll it affirmatively appears a court acted without jurisdiction the judgment is void and of no effect. In re Hofmann's Estate, 132 M 387, 318 P 2d 230, 239.

#### **Jurisdictional Defect**

If there is a failure in any one of the jurisdictional prerequisites preceding termination of heirship, and such jurisdictional defect appears affirmatively upon the face of the judgment roll, the court's order purportedly making such a determination is void and open to collateral attack. In re Bell's Estate, — M —, 331 P 2d 517, 520.

## **CHAPTER 39—FINAL DISTRIBUTION OF ESTATE—DISCHARGE OF EXECUTOR OR ADMINISTRATOR**

Section 91-3901. Distribution of estate—how made and to whom.

### **91-3901. (10327) Distribution of estate—how made and to whom. 1.**

Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or any heir, legatee, or devisee, the court or judge must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to be [by] inheritance must, without administration, be distributed to the other heirs at law; provided, that whenever it appears any of the persons claiming to be heirs, or claiming a right to share in said estate, are nonresidents of the United States, then a proceeding to determine

their rights shall be held under the provisions and as provided for in the three preceding sections with reference to the determination of heirship.

2. Whenever all the heirs or devisees of any estate who are residents of the United States shall agree that any nonresident of the United States is a lawful heir or devisee of said estate and is lawfully entitled to share therein, said agreement may be reduced to writing and filed with the clerk of the court in the matter of said estate, and thereafter it shall not be necessary for any such nonresident heir or devisee to institute any proceedings to determine his rights of heirship.

3. The provisions of subdivision 2 shall dispense with the proceedings provided for by section 91-3801, insofar as such section relates to establishing heirship, but shall not dispense with the necessity of establishing proof of reciprocity as required in estates in which nonresident aliens are claiming as heirs, legatees and/or devisees.

4. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution; and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court or judge, and included in the order; or the court or judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

**History:** En. Sec. 289, p. 315, L. 1877; re-en. Sec. 289, 2nd Div. Rev. Stat. 1879; re-en. Sec. 289, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2843, C. Civ. Proc. 1895; re-en. Sec. 7673, Rev. C. 1907; amd. Sec. 2, Ch. 54, L. 1913; amd. Sec. 2, Ch. 234, L. 1921; re-en. Sec. 10327, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1951. Cal. C. Civ. Proc. Sec. 1665.

#### Compiler's Note

The bracketed word "by" was inserted by the compiler.

#### Amendment

The 1951 amendment added the provisions of subsection 3.

#### Repealing Clause

Section 2 of Ch. 54, L. 1951 repealed all acts and parts of acts in conflict therewith.

#### Jurisdiction of District Court

A district court, when sitting in probate, while still a court of general jurisdiction, can only function and operate on probate matters by following the mandate laid down by the statute. In re Bell's Estate, — M —, 331 P 2d 517, 520.

### 91-3902. (10328) Order of distribution, contents and finality of.

#### Finality of Decree

In the absence of fraud, a decree of distribution made upon due notice is conclusive of the rights of heirs as against

#### Operation and Effect

It is not necessary, nor proper, under this section and section 91-3902, to adjudge whether a legacy has been paid or acquired by third parties, or is subject to a lien, and a decree of distribution is not binding on a person asserting a right against a distributee or on a right claimed to have been acquired from him prior to the rendition of the decree. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092.

#### Procedure for Determination of Heirship

The "three preceding sections" referred to in the proviso, relating to procedure for determination of heirship, are sections 91-3801, 91-3802 and 91-3803. In re Bell's Estate, — M —, 331 P 2d 517, 521.

#### References

Cited or applied in *In re Spoya's Estate*, 129 M 83, 282 P 2d 452, 454.

Personal liability of executor or administrator for interest on legacies or distributive shares where payment is delayed. 18 ALR 2d 1384.

Right of widow of an heir to dower, where heir dies before decedent's estate is closed. 23 ALR 2d 961.

collateral attack. *Harrison v. Cannon*, 122 M 318, 203 P 2d 978, 980.

Where a decree of distribution was entered on an estate and no appeal was



taken from such decree, an affidavit thereafter filed and recorded stating that the affiant was an heir and devisee of the will and claiming an interest in the real estate distributed, was void on its face and constituted no cloud on the title to the land. *Hart v. Barron*, 122 M 350, 204 P 2d 797, 805.

Where executors made an advance payment out of their personal funds to the legatee of a cash bequest and the petition for final distribution and final account did not show the advancement, and the decree of final settlement and distribution declared that the legatee was entitled to the bequest, such decree was not final and conclusive so as to prevent executors from claiming a debt due from the legatee, as against a judgment debtor of the legatee. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092.

#### **Fraud—Effect**

Where proper notice was given of settlement of final account and petition for distribution of estate, heir or legatee could not, more than six months after settlement of final account and order for distribution of estate, have judgment set aside on ground of fraud. *State ex rel. Sanford v. District Court*, 124 M 429, 225 P 2d 866.

#### **Operation and Effect**

It is not necessary, nor proper, under this section and section 91-3901, to adjudge whether a legacy has been paid or acquired by third parties, or is subject to a lien, and a decree of distribution is not binding on a person asserting a right against a distributee or on a right claimed to have been acquired from him prior to the rendition of the decree. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092.

A decree of distribution is conclusive upon the rights of heirs, legatees or devisees, subject only to be reversed, set aside or modified on appeal. In *re Bell's Estate*, — M —, 331 P 2d 517, 520.

A decree of final distribution has the same force and effect as does a final judgment. In *re Bell's Estate*, — M —, 331 P 2d 517, 520.

If there is a failure in any one of the jurisdictional prerequisites preceding determination of heirship, and such jurisdictional defect appears affirmatively upon the face of the judgment roll, the court's order purportedly making such a determination is void and open to collateral attack. In *re Bell's Estate*, — M —, 331 P 2d 517, 520.

Decree of distribution was void where not preceded by determination of heirship as required by sections 91-3801 to 31-3803 and 91-3901. In *re Bell's Estate*, — M —, 331 P 2d 517, 521.

### **91-3904. (10330) Decree to be made only after notice.**

#### **Postponement of Hearing**

Where, after proper notice, administrator filed his final account and petition for final distribution, and after objections were filed postponed the hearing, no

further notice was required before approval of the supplemental account and order for distribution differing from that first proposed. *Harrison v. Cannon*, 122 M 318, 203 P 2d 978.

### **91-3906. (10332) Final settlement, order and discharge.**

#### **Operation and Effect**

A decree of distribution does not concern itself with, and is not the final order of the court on the point of, the payment

of legacies, but that is the office of the decree of final discharge under this section. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092.

## **CHAPTER 40—PARTITION OF UNDIVIDED ESTATES AFTER DISTRIBUTION**

### **91-4004. (10337) Partition may be made, although some of the heirs, etc.**

#### **References**

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092.

### **91-4006. (10339) Whole estate may be assigned to one, in certain cases.**

#### **Setting Aside of Commissioners' Report**

Where the commissioners appraised real property and found its true value to be \$15,000 but at the hearing on the report there were objections thereto and two persons made offers of \$25,000, the court should have set aside the commissioners'

findings. In *re Moran's Estate*, 128 M 189, 273 P 2d 671, 674.

#### **References**

Cited or applied in *re Moran's Estate*, 128 M 189, 273 P 2d 671, 674.

**91-4010. (10343) To make report, and partition to be recorded.**

**Operation and Effect**

The judge must, if the report is just and proper, confirm the commissioners' report, but likewise the judge may, if sufficient reasons appear therefor, set aside the report. Where the commissioners

appraised the property and found its true value to be \$15,000 but at the hearing on the report there were two offers of \$25,000, the court should have set aside the commissioners' findings. *In re Moran's Estate*, 128 M 189, 273 P 2d 671, 674.

CHAPTER 41—APPOINTMENT OF AGENT FOR PERSONS RESIDING  
OUT OF THE STATE

**91-4101. (10346) Court may appoint agent to take possession, etc.**

**Bond Required**

Attorney never qualified as statutory agent for nonresident heirs where he did

not file bond required by section 91-4102. *In re Bell's Estate*, — M —, 331 P 2d 517, 521.

**91-4102. (10347) Bond and compensation of agent.**

**Failure to File Bond**

Attorney never qualified as statutory agent for nonresident heirs under section

91-4101, where he never filed bond required by this section. *In re Bell's Estate*, — M —, 331 P 2d 517, 521.

CHAPTER 42—SETTLEMENT OF ACCOUNTS OF TRUSTEES AFTER  
DISTRIBUTION OF ESTATE

**91-4201. (10352) Court not to lose jurisdiction of trusts, etc.**

**Accounting by Trustee**

Trustee may be compelled to make an accounting upon the application of any

beneficiary under the trust. *Attix v. Robinson*, 155 F Supp 592, 598.

CHAPTER 43—PROBATE PROCEEDINGS, MISCELLANEOUS—CITATIONS  
—APPEALS, ETC.

**91-4311. (10365) Rules of practice generally.**

**Operation and Effect**

Civil actions in the courts of record of this state are commenced by filing a complaint under section 93-3001 and since, under the provisions of this section, the same rule is made applicable to a proceeding for the administration of the estate of a deceased person, such proceeding is commenced by the filing of the

initial petition seeking judicial remedies administered by a court or judge exercising probate jurisdiction. *State ex rel. Reid v. District Court*, 126 M 586, 256 P 2d 546, 550.

**References**

Cited in *In re Hofmann's Estate*, 132 M 387, 318 P 2d 230, 235.

**91-4313. (10367) Within what time appeal must be taken.**

**Operation and Effect**

The provisions of this section are mandatory and jurisdictional. *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693, 695.

**Time for Taking Appeal**

The notice of appeal, being jurisdictional, must be filed and served within the time prescribed and the courts cannot lawfully extend the time nor excuse a failure to comply with the statute. Where,

as here, an application for a new trial is not prerequisite to review by appeal, the filing of a motion for a new trial does not have the effect of extending the statutory period prescribed for the giving of notice of appeal. Neither is such time extended by a motion for relief from the judgment on the ground of mistake, inadvertence or excusable neglect. *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693, 698.

**91-4316. (10370) Court to appoint attorney for minor or absent heirs, etc.****Failure to Appoint Attorneys—Effect**

Fact that no attorneys were appointed to represent minors in proceeding for sale of real estate did not affect the validity of the proceedings. *Haugan v. Yale Oil Corp.*, 124 M 1, 217 P 2d 1084, 1087.

**Petition to Determine Heirship**

Attorneys to represent foreign heirs, appointed by court, under this section, where court decided that certain nonresident heirs did not have representation in the

probate of an estate, had no right to petition for heirship proceedings under section 91-3801. In *re Hofmann's Estate*, 132 M 387, 318 P 2d 230, 239.

**Purpose of Statute**

The purpose of this statute was never calculated to be utilized to initiate any proceedings, but merely to protect those parties enumerated once the hearings were pending. In *re Hofmann's Estate*, 132 M 387, 318 P 2d 230, 241.

**91-4321. (10375) Termination of life estate or joint tenancy.****Curing Defect in Title**

This section as it is now written was enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. *State v. Rice*, — M —, 329 P 2d 451, 453.

**Inheritance Tax**

Petitioner in a petition to terminate a joint tenancy under this section may do every act required by Inheritance Tax Act (91-4401 et seq.) including the filing of an inventory of all property of deceased, and the making and filing of the required State Board Forms No. 2-F and 3-A reports, or the petitioning of the district court for exclusion of property from in-

heritance tax. *State v. Rice*, — M —, 329 P 2d 451, 454.

Where petitioner in a petition to terminate a joint tenancy seeks determination of inheritance tax by filing inventory of property of deceased and reports required by state board, if the state board believes that property subject to tax has not been reported, it may in its objections to the 3-A report, set forth the same, and the court will determine the matter at the hearing to determine the tax due. *State v. Rice*, — M —, 329 P 2d 451, 454.

**Operation and Effect**

In a special probate proceeding under this section the court could not render a judgment quieting title to the property in question. In *re Vincent's Estate*, 133 M 424, 324 P 2d 403, 408.

**91-4322. (10376) Power of clerk to issue orders and notices.****Collateral Attack**

Objection that clerk in appointing executor was usurping judicial powers was

not available on collateral attack. *Hinton v. Staunton*, 124 M 534, 228 P 2d 461, 464.

**CHAPTER 44—INHERITANCE TAX**

- Section 91-4402. Transfers in contemplation of death.  
 91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property.  
 91-4407. Tax on clear market value—deductions.  
 91-4414. Exemptions from first \$25,000.  
 91-4415. When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.  
 91-4421. Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given board of equalization—amount of tax to be retained on delivery of assets—penalties.  
 91-4423. Jurisdiction of district court—notice to state board required before hearing.  
 91-4430. Notice of hearing.



**91-4401. (10400.1) Taxes on transfer—when and how imposed.**

**Effect of Owner of Real Property Being a Resident of a Community Property State**

Where the decedent was a resident of California and had used community property funds to purchase land in Montana, there was still an inheritance tax due on the whole of the land value in Montana when it was devised to his wife. She did not have an undivided one-half interest in the Montana land by virtue of the California community property laws, since the effect of the community property laws does not vest title in her automatically but it does enlarge her "bundle of right." (See, however, the dissenting opinion of two judges.) In re Hunter's Estate, 125 M 315, 236 P 2d 94, 99.

**Gifts not Subject to Tax**

Gifts by decedent to his son and daughter were not subject to inheritance tax

where the only effect of the mention of these gifts in the will was to explain why the decedent did not give them more and to show that they were not overlooked. The transferees took nothing by virtue of the will. The gifts had been made before the will was made and had been completed and the transfer vested title to the property in the donees without reference to the will. In re Ludington's Estate, — M —, 333 P 2d 873, 874.

**References**

Cited or applied in State v. Hanson, 125 M 174, 232 P 2d 342, 346; In re Coleman's Estate, 132 M 339, 317 P 2d 880, 882.

Succession, estate, or inheritance tax as affected by compromise of will contest. 36 ALR 2d 917.

Construction and application of statutes apportioning or prorating estate taxes. 37 ALR 2d 199.

**91-4402. Transfers in contemplation of death.** When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within the state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within three (3) years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without a fair consideration in money or money's worth shall, unless shown to the contrary be deemed to have been made in contemplation of death within the meaning of this section, but no such transfer by deed, grant, bargain, sale or gift, made before such three-year period shall be treated as having been made in contemplation of death providing, however, that nothing herein contained shall be deemed to have modified, amended, or repealed the provisions of section 91-4408 of the Revised Codes of Montana, 1947.

**History:** En. Sec. 1 (part), Ch. 65, L. 1923; amd. Sec. 1 (part), Ch. 150, L. 1925; amd. Sec. 1 (part), Ch. 105, L. 1927; amd. Sec. 1 (part), Ch. 186, L. 1935; amd. Sec. 1, Ch. 269, L. 1955.

**Amendment**

The 1955 amendment added all that part of the second sentence beginning with the words "but no such transfer . . . ."

**Burden of Proof**

Burden of proof is upon the transferee to overcome the presumption that the gift was made in contemplation of death if the transfer was made within three years prior to the death of the donor. But, if the gift were made more than three years prior to the death of the grantor, the

burden of proof is upon the state to show that in fact the gift was made in contemplation of death. In re Ludington's Estate, — M —, 333 P 2d 873, 874.

**Correction of Deed**

In a proceeding by wife to terminate joint tenancy and determine inheritance tax, decedent having died on December 11, 1954, at age of 74 years, from injuries sustained in an automobile accident, the court properly excluded one-half the value of the farm land from the inheritance tax, where transfer of title was made by decedent to himself and his wife to correct error in deed to him alone in 1938, on December 9, 1952, while decedent was in good health and was not contemplating death. State v. Rice, — M —, 329 P 2d 451, 455.

### Deed in Escrow

Where deed to hotel property was deposited in escrow and the agreement required the grantee, a stranger, to pay certain specified amounts monthly for a period of three years after which he was to pay a certain amount monthly for the remainder of the lifetime of the grantor which amount was not disproportionately less than the value of the property and the grantee was to have immediate possession, make repairs and carry insurance on the property, there was not a taxable transfer of property in contemplation of death. In re Sebree's Estate, 122 M 509, 206 P 2d 553.

### Determination of Whether or Not Gift is in Contemplation of Death

Generally, the test to be applied is to ascertain the dominant motive of the donor in the light of his bodily and mental condition, and "the best evidence of the decedent's state of mind at the time and the reasons for making the transfers are the statements and expressions of the decedent himself." In re Warren's Estate, 128 M 395, 275 P 2d 843, 844.

### Family Partnership

Decedent, who died intestate on November 12, 1952, at age 78, on December 10, 1951, gave undivided one-seventh interest in his ranch, livestock, and equipment used in its operation, to each of his five children and his wife, retaining an undivided one-seventh interest for himself, and the family then organized a partnership to continue operations. Donor paid federal gift tax thereon. At the time of the transfers donor was in good health and making preparations for a trip to Africa. District court properly held that the transfers were not made in contemplation of death and were not taxable. In re Keating's Estate, — M —, 332 P 2d 906, 908.

### Gifts Not in Contemplation of Death

Where decedent after forming a corporation for the operation of his farm transferred some of the stock to members of his family who had been working on the farm and evidence disclosed that it was because he had offered them a share in the business if they worked in it, the gifts were not in contemplation of death and were made for purposes associated with life rather than with death. In re Warren's Estate, 128 M 395, 275 P 2d 843, 844.

### Gift to Daughter

Sometime prior to May 3, 1949, deceased made a gift of \$10,000 to his daughter, who was seeking a loan rather than a gift, but was informed by her father that he preferred to make a gift

outright, which was explained in his will. Decedent died on May 4, 1954, at the age of 72 years. This amount was properly excluded from his estate for the purpose of inheritance tax. In re Ludington's Estate, — M —, 333 P 2d 873, 874.

### Joint Bank Account

Where money, solely the property of one person, was deposited in a joint bank account payable either to her or the other person without consideration, and such deposit was made within three years of the death of the person, half of the account was a gift in contemplation of death and taxable under this section, and after the death of the person, the half then received by right of survivorship is taxable under section 91-4405. State Board of Equalization v. Cole, 122 M 9, 195 P 2d 989.

### Presumption

The transfer of one-half interest in farm land to wife, having been made within three years prior to the death of the grantor, is presumed to have been made in contemplation of death, unless shown to the contrary. State v. Rice, — M —, 329 P 2d 451, 455.

### Satisfaction of Mortgage

Forgiveness of debt, which was not made by will, but made by a duly executed and recorded satisfaction of mortgage made and recorded more than three years prior to the death of the decedent, was properly excluded from his estate for the purpose of inheritance tax. In re Ludington's Estate, — M —, 333 P 2d 873, 875.

### United States Savings Bonds

Where person with her own funds purchased Series G United States savings bonds payable to her or in the alternative to another person named on the bonds and she retained control of the bonds they were not "held in the joint names of two or more persons" within the meaning of section 91-4405, and they amounted to a transfer to take effect at or after death taxable at their full market value under this section. State Board of Equalization v. Cole, 122 M 9, 195 P 2d 989, 997.

For there to be an absolute inter vivos gift and not taxable as a transfer in contemplation of death, there must be the expiration of the presumptive period and an absence of proof to the contrary. If there is no delivery to the cotenant, the transfer is one to take effect at or after death and taxable as such. In re Marsh's Estate, 125 M 239, 234 P 2d 459, 462.

### References

Cited or applied in In re McAnelly's Estate, 127 M 158, 258 P 2d 741, 748; In re

Coleman's Estate, 132 M 339, 317 P 2d 880, 881.

Transfer by inter vivos trust of insur-

ance policies upon settlor's life as in contemplation of death for tax purposes. 17 ALR 2d 787.

### 91-4403. Tax—when imposed.

#### Law Applicable

Where trust was created in the year 1915 under which certain persons were to receive portions of the trust funds on the death of settlor of the trust who died in

1945, the transfer, for inheritance tax purposes, was to be taxed at the rate in existence in 1945 and not at the rate in existence in 1915. In re Kohr's Estate, 122 M 145, 199 P 2d 856, 5 ALR 2d 1046.

### 91-4404. Transfers under power of appointment.

Inheritance, succession, or estate tax on property covered by power of appointment as affected by location of property, or resi-

dence of parties, outside the taxing state or country. 19 ALR 2d 1415.

**91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property.** Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, inscribed in co-ownership form, or held in joint tenancy by two [2] or more persons, or as tenants by the entirety, or is deposited in any bank or other depository in the joint names of two [2] or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons, as tenants in common, and had been, for inheritance tax purposes, bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent. This section shall not be construed to repeal or modify the provisions of section 91-4402, Revised Codes of Montana, 1947.

**History:** En. Sec. 1 (part), Ch. 65, L. 1923; amd. Sec. 1 (part), Ch. 150, L. 1925; amd. Sec. 1 (part), Ch. 105, L. 1927; amd. Sec. 1 (part), Ch. 186, L. 1935; amd. Sec. 1, Ch. 181, L. 1951.

#### Amendment

The 1951 amendment revised the wording of this section, adding the last sentence and changing the description of the property to which the section applies, the former description being "any property, real or personal \* \* \* held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor."

#### Repealing Clause

Section 2 of Ch. 181, L. 1951 repealed all acts or parts of acts in conflict therewith, except as provided in that act.

#### Effective Date

Section 3 of Ch. 181, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 1, 1951.

#### Cross-Reference

See annotations to sec. 91-4402. State Board of Equalization v. Cole, 122 M 9, 195 P 2d 989.

#### Construction

The exception at the end of this section means "except such part of the decedent's fractional share of the property thus deemed to be bequeathed or devised by will as may be shown to have originally belonged to the survivor and never to have belonged to the decedent prior to the creation of the joint tenancy." In re Kuhr's Estate, 123 M 593, 220 P 2d 83, 85.



### Entire Estate Property of Surviving Spouse—No Tax Due

Where property held in joint tenancy by husband and wife was purchased with the funds of the surviving husband, no inheritance tax was due on such property. In re Kuhr's Estate, 123 M 593, 220 P 2d 83, 85.

### Operation and Effect

Where a husband and wife purchase land jointly and the funds come from a joint bank account to which it can be shown that the husband originally contributed all the money, one-half of the realty is considered the wife's share upon her death and it is subject to the tax imposed by this section. The fact that the consideration at some previous time came as a gift from one spouse to another is unimportant. In order for the exception in the statute to apply, it must be shown that the immediate joint tenancy originally belonged to the survivor prior to the creation of the immediate joint tenancy. *State v. Hanson*, 125 M 174, 232 P 2d 342, 344.

In the case of joint bank accounts where it can be shown that the money was originally furnished by the survivor and none by the decedent the account is not taxable for it comes within the exception in this section. *State v. Hanson*, 125 M 174, 232 P 2d 342, 345.

Where the husband and wife hold a promissory note jointly it is taxable under this section. The property so taxed is the credits or choses in action, the various promissory notes, and that property never had belonged to the survivor prior to its acquisition by the husband and wife. *State*

*v. Hanson*, 125 M 174, 232 P 2d 342, 346.

In estates where the death occurred before March 1, 1951, the effective date of this section; the tax on government series E and G bonds is generally imposed by section 91-4402. In re Marsh's Estate, 125 M 239, 234 P 2d 459, 462.

### United States Savings Bonds

United States savings bonds registered jointly in the name of the decedent and one of her three children and kept in a safe deposit box in the name of the decedent and one of her children to which such daughter had access did not constitute a gift to any of the children, the possession remaining joint and the bonds were taxable. In re Brown's Estate, 122 M 451, 206 P 2d 816, 821.

Government bonds can never be held in tenancy by the entirety, because either cotenant may sell the bonds upon surrender of the bond and receive the full accrued value; while the very characteristic that distinguishes the tenancy by the entirety from other cotenancies is that neither of the cotenants alone can terminate the tenancy or sever the estate. In re Marsh's Estate, 125 M 239, 234 P 2d 459, 461, 462.

### References

Cited or applied in *In re McAnelly's Estate*, 127 M 158, 258 P 2d 741, 748; *State ex rel. Simon v. District Court*, 128 M 454, 277 P 2d 534, 535 (dissenting opinion).

State inheritance, estate or succession tax on United States savings bond. 39 ALR 2d 706.

## 91-4406. Insurance part of estate.

### Amount of Exclusion from Gross Estate

Decedent's gross estate aggregated \$378,916.29, \$64,761.33 thereof represented proceeds from life insurance policies. Of this, \$16,536.29 was payable to named beneficiaries. The balance of the life insurance proceeds, \$48,225.04 was made payable to the executor of the estate. District court was not in error in determining that \$50,000 was exempt from inheritance tax. In re Cline's Estate, 132 M 328, 317 P 2d 874, 875.

### Annuity Proceeds

Where total amount of annuity proceeds and insurance was \$53,276.26, and the amount of proceeds from the annuity was \$2,813.61, the \$50,000 exemption did not extend to these annuity proceeds. In re Coleman's Estate, 132 M 339, 317 P 2d 880, 883.

### Application of Statute

This is a specific statute exempting all insurance proceeds up to \$50,000 and tax-

ing insurance proceeds over and above that amount. It makes no difference to whom the proceeds are payable, whether named beneficiaries, trustees, or personal representatives of the decedent. In re Cline's Estate, 132 M 328, 317 P 2d 874, 875; In re Coleman's Estate, 132 M 339, 317 P 2d 880, 883.

Naming ultimate beneficiaries of life insurance policies in trust agreement and not in insurance policies did not make proceeds subject to tax to the extent that they did not exceed \$50,000. In re Coleman's Estate, 132 M 339, 317 P 2d 880, 883.

### Insurance Defined

Annuity policies are "insurance" within the meaning of this section. In re Hammerstrom's Estate, 133 M 469, 326 P 2d 699; In re O'Grady's Estate, 133 M 595, 326 P 2d 705.

### Matured Endowments Left With Insurer

Proceeds of life insurance policies which

have matured as endowments and which are left with the insurance company at a fixed rate of interest, the principal sum payable at death, in accordance with one

of the optional modes of settlement, are not exempt under the insurance exemption of this section. In *re Harper's Estate*, 124 M 52, 218 P 2d 927.

**91-4407. Tax on clear market value—deductions.** The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation or body politic, at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation or body politic, and in determining the clear market value of the property so passing by any such transfer the following deductions, and no other shall be allowed; debts of the decedent owing at the date of death, expenses of funeral and last illness, all Montana state, county, municipal and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death, the ordinary expenses of administration, including the commissions and fees of executors and administrators and their attorneys actually allowed and paid, including attorneys' fees, filing fees, necessary expenses and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax, and federal estate taxes due or paid.

**History:** En. Sec. 1 (part), Ch. 65, L. 1923; amd. Sec. 1 (part), Ch. 150, L. 1925; amd. Sec. 1 (part), Ch. 105, L. 1927; amd. Sec. 1 (part), Ch. 186, L. 1935; amd. Sec. 1, Ch. 5, L. 1957; amd. Sec. 1, Ch. 232, L. 1959.

#### Construction

The words "actually allowed and paid" as used in the statute do not relate to the ordinary expenses of administration. In *re Warren's Estate*, 128 M 395, 275 P 2d 843, 846.

#### Expenses of Administration

In a proceeding under section 91-4321 to terminate joint tenancy and have inheritance tax determined court should not have allowed as expenses, the attorney fee, filing fee, and estimated closing expenses, for these were all expenses of administration, and there being no estate, there could be no expenses of administration. *State v. Rice*, — M —, 329 P 2d 451, 454.

#### Operation and Effect

This statute is clear and direct and declares no deduction shall be allowed except those specified therein. In *re McAnelly's Estate*, 127 M 158, 258 P 2d 741, 748.

#### Ordinary Expenses

While ordinarily the appraisers are the ones who fix the value of the property of an estate, where the estate consists of stock in a closely held corporation, the services of an accountant may become necessary to determine the fair market value of the stock and the cost of such services are an ordinary expense in the administration of the estate. In *re Warren's Estate*, 128 M 395, 275 P 2d 843, 846.

Valuation of corporate stock for purposes of succession, inheritance, or estate tax, as affected by quantity involved. 23 ALR 2d 775.

#### Amendments

The 1957 amendment substituted the words "all Montana state, county, municipal and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death" for the words "all state, county and municipal taxes which are a lien against property situated in this state at the date of death."

The 1959 amendment inserted the words "including attorney's fees, filing fees, necessary expenses and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax."

#### Repealing Clause

Section 2 of Ch. 232, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 2 of Ch. 5, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 7, 1957.

Section 3 of Ch. 232, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

## DECISIONS UNDER FORMER LAW

**Interest on Federal Estate Tax**

Interest on federal estate tax is not deductible under this section since it is not mentioned. The statute is clear and

direct and declares no deduction shall be allowed except those specified therein. In re McAnelly's Estate, 127 M 158, 258 P 2d 741, 748.

**91-4413. Exemption of intangible personal property, etc.****Character of Property at Death**

It is the character of the property at death that determines whether it is real or personal property and whether it is subject to a transfer tax. In re Briebach's Estate, 132 M 437, 318 P 2d 223, 225.

**Contracts for Sale of Real Estate**

Decedent had been a resident of Montana but had moved to California where he resided at the time of his death. During his lifetime he contracted to sell land in Montana. At the time of his death there remained due unpaid balances. Decedent left a will devising and bequeathing all of his property to his wife. Rights passing to widow under the contracts was properly excluded from the gross value of the estate subject to an inheritance tax

under this section. In re Briebach's Estate, 132 M 437, 318 P 2d 223, 225.

**Partnership Property**

When partnership is settled and the debts are paid, the real estate of the partnership retains its character as such and is not tax exempt as intangible property. In re Perry's Estate, 121 M 280, 192 P 2d 532, 537.

As to personal property of a partnership, only so much thereof as is necessary to discharge the duties imposed on the survivor passes to him and the balance of the partnership property should be divided between the surviving partners and the heirs of the deceased partner, which retains its character as tangible property and is not tax exempt. In re Perry's Estate, 121 M 280, 192 P 2d 532, 538.

**91-4414. (10400.4) Exemptions from first \$25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, or to corporations or voluntary associations of this state organized under its laws solely for religious, charitable, educational or other public purposes, which shall use the property so transferred exclusively for the purpose of their organization within the state, and all transfers to any privately owned hospital for crippled children within the United States, primarily practicing orthopedies, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated, shall be exempt.

(2) \$17,500; \$5,000; \$2,000 exempt, when. Property of the clear value of seventeen thousand five hundred dollars, transferred to the wife, or five thousand dollars transferred to the husband of the decedent, and two thousand dollars transferred to each of the other persons described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the widow shall include all her statutory dower and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the widow as applied to any property which shall thereafter be transferred by or from such widow to any such child, provided the widow does not survive said decedent to exceed ten years.

(3) \$500 exempt, when. Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.



(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

**History:** En. Sec. 4, Ch. 65, L. 1923; state" appearing near the end of subsection (1).  
amd. Sec. 1, Ch. 105, L. 1953.

**Amendment**

The 1953 amendment inserted the words "and all transfers to any privately owned hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated" after the words "within the

**Repealing Clause**

Section 2 of Ch. 105, Laws 1953 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 105 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

**91-4415. (10400.5) When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.** All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred for a period of ten [10] years from the time of the death of the decedent unless sooner paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided, and if paid to the county treasurer said treasurer shall make triplicate receipts of such payment, one of which he shall immediately send to the state treasurer, whose duty it shall be to charge the county treasurer so receiving the tax, with the amount thereof, and the other receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts. One he shall keep on file in his office.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419.

**History:** En. Sec. 5, Ch. 65, L. 1923;  
amd. Sec. 1, Ch. 16, L. 1951.

**Amendment**

The 1951 amendment substituted "for a period of ten years from the time of the death of the decedent unless sooner paid" for "until paid."

**Repealing Clause**

Section 2 of Ch. 16, L. 1951 repealed all acts or parts of acts in conflict therewith.

**91-4421. (10400.11) Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident**

**decedent—apportionment of deductions—information to be given board of equalization—amount of tax to be retained on delivery of assets—penalties.** (1) If a foreign executor, administrator, or trustee shall assign or transfer any stocks, bonds, mortgages, or other securities, in this state, or within the jurisdiction of this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

(2) No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any corporation organized under the laws of this state, in which a nonresident decedent held stock, bonds, mortgages, or other securities, at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the state board of equalization at least ten (10) days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the state board of equalization, personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The state board of equalization may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the said board that no tax is due thereon; provided, however, that the foregoing provisions shall not apply to shares of stock in any Montana corporation held by a nonresident of Montana at the time of his death whose death occurred on or after January 30, 1945, and who was at the time of his death domiciled in any other district or state of the United States, provided reciprocal rights are granted by such district or state of domicile similar to section 91-4413, Revised Codes of Montana, 1947, and in such event this subsection (2) shall not apply to the transfer of stocks, bonds, mortgages or other securities exempt from taxation under the provisions of section 91-4413, and a Montana corporation, or its agent, may transfer stocks, bonds, mortgages and other securities without any liability for the tax imposed under the provisions of the inheritance tax laws where there are reciprocal rights as set forth in section 91-4413, and in such event no application for consent to transfer such stock need be made to the state board of equalization of the state of Montana, and the corporation, or its duly authorized transfer agent may transfer such shares of stock upon its books without any such application or consent to transfer.

(3) Whenever a tax may be due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property, when the property or the estate left by such decedent is partly within and partly without this state, or upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate shall be entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state, but no deduction shall be made for any federal estate, inheritance, succession or transfer taxes paid to the United States. As to his Montana exemption, each beneficiary shall be entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate.

(4) The state board of equalization shall require such reports and information and shall make such orders, rules, and regulations as it may deem necessary to enable the said board to secure the necessary information from domestic corporations, and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of this act on account of such transfer, except upon order of the proper court or a certificate of consent of the state board of equalization.

(5) Any corporation or holding company violating the provisions of this section shall be liable to the state for the amount of the tax together with a penalty of ten per centum (10%) thereof.

**History:** En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; amd. Sec. 1, Ch. 62, L. 1953.

**Repealing Clause**

Section 2 of Ch. 62, Laws 1953 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1953 amendment inserted the number "(10)" in subsection 2 and added the proviso in that subsection.

**Effective Date**

Section 3 of Ch. 62, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

**91-4423. (10400.13) Jurisdiction of district court—notice to state board required before hearing.** The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws, and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two [2] or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court.



Before any decree determining inheritance tax in any estate shall be made by the court, the court shall require proof that due notice has been given to the state board of equalization before the hearing upon the petition to have inheritance tax determined, whether such hearing be at the time of the hearing on the final account or otherwise; and the court shall likewise require proof that a copy of such petition has been given to the board not later than the time of giving the notice; and, before the time fixed in said notice, said board shall cause to be filed, with the clerk of the district court, a certificate signed by the board stating that the amount of the inheritance tax determined to be due the state of Montana as appearing in the report or petition, has been properly computed therein or, if no tax is due, such certificate shall so state; and, if the board shall object to the amount of the tax so computed, the board shall, before the time fixed for the hearing, file with the clerk of the court its written objections thereto, setting forth therein the nature of the objections. If neither such certificate nor objections shall have been filed at the time fixed for the hearing, it shall be conclusively presumed that the board concurs in the amount so computed.

**History:** En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; amd. Sec. 1, Ch. 79, L. 1951.

#### **Amendment**

The 1951 amendment substituted the last paragraph for a paragraph which read, "Before decree of distribution in any estate shall be issued by the district judge, or the issuance of an order discharging the executor, administrator or trustee of any estate, there shall be filed with the clerk of the district court a certificate

signed by the state board of equalization stating that the amount of inheritance tax determined to be due to the state of Montana, as appearing in the order of the court determining tax, has been properly computed, or if no tax is due such certificate shall so state."

#### **Repealing Clause**

Section 2 of Ch. 79, L. 1951 repealed all acts and parts of acts in conflict therewith.

**91-4430. (10400.20) Notice of hearing.** Notice of such hearing to determine the inheritance tax shall be given in the same manner and may be included in the notice of hearing the administration account, as provided by law. A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the state board of equalization not less than fifteen (15) days before such hearing, upon notice forms provided by said board and containing such information as it may require.

**History:** En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 5, Ch. 141, L. 1927; amd. Sec. 1, Ch. 80, L. 1949.

#### **Amendment**

The 1949 amendment inserted that part of the second sentence to the first comma, substituted "and notice of any such hearing" for "Notice in writing of such hearing," increased the time from ten to fifteen days and substituted "notice forms provided by said board and containing such information as it may require" for

"such blanks and containing such information as the state board of equalization may provide."

#### **Repealing Clause**

Section 2 of Ch. 80, L. 1949 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 80, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 24, 1949.

**91-4432. (10400.22) Appraisal at clear market value at time of death, etc.**

#### **Widow's Life Estate**

Decedent left a will giving wife residue and remainder of his property during the

term of her natural life, provided she should remain his widow, with right to dispose of the same or any part thereof, for

her use, support and maintenance, at her discretion. A following paragraph gave to his two daughters, in equal shares, the property referred to in the preceding paragraph to come into possession thereof at the death or remarriage of the wife. The widow never remarried and died within six months after death of testator. Net

estate of taxable value of \$99,022.61 passed under the paragraphs mentioned, of that amount court properly found that \$18,784.19 passed to the widow where amount was calculated upon the basis of her life expectancy of 5.72 years. In re Bishir's Estate, 132 M 558, 318 P 2d 576, 577.

**91-4434. (10400.24) Repealed.**

**Repeal**

This section (Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 5, Ch. 141, L. 1927), relating to inherit-

ance tax on property transferred subject to any charge, estate or interest determinable by death, was repealed by Sec. 1, Ch. 100, Laws 1955.

**91-4438. (10400.28) Rehearing within sixty days.**

**Supervisory Control**

The Supreme Court was without jurisdiction in State ex rel. Blankenbaker v. District Court, 109 M 331, 96 P 2d 936 to review the record of the proceedings on its writ of supervisory control since the relatrix had a clear and adequate remedy by appeal from the judgment and order fixing the tax which she was required to pay, all duly prescribed by written law,

but she failed to avail herself of such remedy and the judgment and order. Hence the opinion, decision and holding of this court in the case of State ex rel. Blankenbaker v. District Court, 109 M 331, 96 P 2d 936, are expressly disapproved and overruled. State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 705.

**91-4440. (10400.30) Collection of unpaid taxes.**

**Evidence of Value**

Evidence that furniture was old and of little value may be admitted although no answer or reply was filed to controvert the

verified affirmative allegations of the state since only those pleadings enumerated in the statute are necessary. In re Seebree's Estate, 122 M 509, 206 P 2d 553, 555.

**91-4441. (10400.31) Special administration to determine tax, etc.**

**Termination of Joint Tenancy**

Petitioner in a petition to terminate a joint tenancy under section 91-4321 may do every act required by this statute (91-4401 et seq.) including the filing of an inventory of all property of the deceased, and the making and filing of the required State Board Forms No. 2-F and 3-A reports, or the petitioning of the district court for exclusion of property from inheritance tax. State v. Rice, — M —, 329 P 2d 451, 454.

Where petitioner seeks a determination of inheritance tax under section 91-4321 by filing inventory of property of deceased and reports required by state board, if the state board believes that property subject to tax has not been reported, it may in its objections to the 3-A report, set forth the same, and the court will determine the matter at the hearing to determine the tax due. State v. Rice, — M —, 329 P 2d 451, 454.

**91-4453. (10400.43) Definitions.**

**Intangible Property**

The interest of a vendor in a contract to sell real estate is intangible property.

In re Briebach's Estate, 132 M 437, 318 P 2d 223, 224.

CHAPTER 45—GUARDIAN AND WARD

**91-4509. (5876) Guardian of property of nonresident person, etc.**

**Failure to Appoint Attorney for Minor**

Fact that no attorneys were appointed to represent minors in proceeding for sale of real estate by administrator of estate

did not affect the validity of the proceedings under section 91-4316. Haugan v. Yale Oil Corp., 124 M 1, 217 P 2d 1084, 1087.

**91-4515. (5878) Rules of awarding custody of minors.**

**Modification**

When the custodial fitness of neither

spouse is questioned a bill of exceptions and a judgment roll reflecting four modifi-

cations of custody orders in nine weeks, no matter how well intended or by whom sought or ordered, supported by undisputed testimony, is clear prima facie record of substantial change affecting the children warranting modification of decree. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 228.

In hearings on motions to modify child custody orders, parties desiring written findings of facts and conclusions of law must move for them in writing at the close of the evidence, as the statute requires. Even then, if the evidence justifies but one conclusion, formal findings are not necessary. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 230.

#### **Mother Preferred**

Other things being equal, custody in the mother is to be preferred where children are of tender years. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 226.

#### **Operation and Effect**

On a hearing of a modification of a decree which awarded the father custody of the minor child, the trial court did not

abuse his discretion in denying the motion to modify the decree. While there has been a change of condition surrounding the mother since she has since remarried and maintains a home there was no showing that the father has not taken good care of the infant and there is evidence that the mother hasn't visited the child for some time. *Barham v. Barham*, 127 M 216, 259 P 2d 805. (See, however, dissenting opinion, 127 M 216, 259 P 2d 805, 807.)

#### **Residence of Children**

Limitations on residence of children are to be conditioned by what appears best for the children and the trial judge is invested with much discretion in these matters. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 230.

#### **References**

Cited or applied in *Campbell v. Campbell*, 126 M 118, 245 P 2d 847, 850; *Oberosler v. Oberosler*, 128 M 140, 272 P 2d 1005, 1007; *Bayers v. Bayers*, 129 M 1, 281 P 2d 506, 508.

### **91-4524. (5887) Guardian appointed by court—how superseded.**

Consideration and weight of religious affiliations in appointment or removal of guardian for minor child. 22 ALR 2d 696.

## **CHAPTER 46—GUARDIANS OF MINORS**

### **91-4607. (10407) Powers and duties of guardians.**

#### **Note to Guardian Individually**

Where guardian made loan of guardianship funds and after the running of the statute of limitations a note was made payable to the guardian individually and

not in his capacity as guardian, such note nevertheless revived the debt for the benefit of the wards. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 377.

## **CHAPTER 47—GUARDIANS OF INSANE AND INCOMPETENT PERSONS**

Section 91-4704. Petition for restoration to capacity.

### **91-4701. (10412) Guardians of insane and other incompetent persons.**

#### **Notice**

Court is without authority to appoint a guardian of the person and estate without service of a notice of the time and place of the hearing of the guardianship petition, and a guardian appointed without such notice is a guardian de facto. *Grauman v. Chambers*, 122 M 31, 198 P 2d 629, 632.

#### **References**

Cited in *Emery v. Emery*, 122 M 201, 200 P 2d 251, 261.

Priority and preference in appointing guardian of an incompetent. 21 ALR 2d 880.

**91-4704. (10415) Petition for restoration to capacity.** A person who has been declared insane or incompetent, or the guardian, or any relative of such person within the third degree, or any friend, may apply, by petition, to the district court of the county in which he was declared insane,



to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is then sane or competent. Upon receiving the petition, the court or judge must appoint a day for a hearing before the court, and, if the petitioner request it, shall order an investigation before a jury, which shall be summoned and impaneled in the same manner as juries are summoned and impaneled in civil actions. The court or judge shall cause notice of the trial to be given to the guardian of a person so declared insane or incompetent, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county, and to the superintendent of Montana state hospital in all cases in which the petitioner is on parole from said hospital. On the trial, the guardian or relative of the person declared insane or incompetent, the superintendent of Montana state hospital, and, in the discretion of the court or judge, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the court or judge on its or his own motion. If it be found that the person be of sound mind, and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person shall be not a minor, shall cease. The clerk of the court by which such petition is determined shall mail a copy of the order determining the same to the superintendent of Montana state hospital.

**History:** En. Sec. 2973, C. Civ. Proc. 1895; re-en. Sec. 7767, Rev. C. 1907; re-en. Sec. 10415, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1953. Cal. C. Civ. Proc. Sec. 1766.

#### Amendment

The 1953 amendment added the words "and to the superintendent of Montana state hospital in all cases in which the

petitioner is on parole from said hospital" at the end of the fourth sentence; inserted the words "the superintendent of Montana state hospital" in the fifth sentence; inserted the words "or his" appearing after the words "court or judge on its" in the sixth sentence and added the last sentence.

## CHAPTER 48—GUARDIANSHIP OF INCOMPETENT VETERANS, MINORS, AND OTHER BENEFICIARIES OF THE VETERANS ADMINISTRATION

Section 91-4818. Commitment to veterans' administration or other agency of United States government.

### 91-4818. Commitment to veterans' administration or other agency of United States government.

(1) and (2). \* \* \* [Subdivisions (1) and (2), same as parent volume.]

(3) Upon receipt of a certificate of the veterans' administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore or hereafter committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans' administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans' administration or other

agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans' administration or other agency of the United States pursuant to the original commitment.

**History:** En. Sec. 18, Ch. 58, L. 1943;  
amd. Sec. 1, Ch. 24, L. 1955.

#### **Amendment**

The 1955 amendment in subd. (3) added the words "or hereafter" between the words "heretofore" and "committed."

#### **Repealing Clause**

Section 2 of Ch. 24, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 24, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 14, 1955.

#### **References**

Cited or applied in *State v. Kitchens*, 129 M 331, 236 P 2d 1079, 1085; *State ex rel. Kitchens v. District Court*, 130 M 57, 294 P 2d 907, 911.

### **CHAPTER 49—GUARDIAN'S POWERS AND DUTIES**

Section 91-4911. Procedure to mortgage, lease or grant right of way.

#### **91-4902. (10418) Guardian to recover debts due his ward, etc.**

##### **Release of Debt**

Where defendant was indebted to a guardianship estate a release executed by the guardian without authorization of the

court would not bind the wards after they attained their majority. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 378.

#### **91-4903. (10419) Guardian to manage his estate, maintain ward, etc.**

##### **Management of Estate**

Guardian is not responsible for loss sustained by holding cattle which were in poor shape for two years in order to obtain better marketing conditions, since the failure of the cattle to improve was due to severe winters and dry summers. *Grauman v. Chambers*, 122 M 31, 198 P 2d 629.

##### **Note to Guardian Individually**

Where guardian made loan of guardianship funds and after the running of the statute of limitations a note was made payable to the guardian individually and not in his capacity as guardian, such note nevertheless revived the debt for the benefit of the wards. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 377.

#### **91-4907. (10423) Settlement of guardians' accounts.**

##### **References**

Cited in *Guardianship of Reid*, 128 M 197, 271 P 2d 1031, 1036.

#### **91-4908. (10424) Allowance of accounts of joint guardians.**

##### **Operation and Effect**

Where one co-guardian filed a final account and the other co-guardian appeared at the hearing and produced his records and filed an affidavit stating that the material portions of the final account as filed

by the other co-guardian were correct, the procedure followed was sufficient to authorize the court to accept and approve the documents as a joint final account. *Guardianship of Reid*, 128 M 197, 271 P 2d 1031, 1036.

#### **91-4909. (10425) Expenses and compensation of guardians.**

##### **Attorney's Fees**

This section allows the guardian his reasonable expenses incurred in the execution of the trust and attorney's fees are of that character. *Grauman v. Chambers*, 122 M 31, 198 P 2d 629, 636.

##### **De Facto Guardian**

A de facto guardian is entitled to a just and reasonable compensation for his services to be fixed in the sound discretion of the court. *Grauman v. Chambers*, 122 M 31, 198 P 2d 629, 636.

**91-4911. (10427) Procedure to mortgage, lease or grant right of way.** To obtain an order to mortgage, lease such real estate, or grant a right of way, the proceedings to be taken and the effect thereof must be as follows:

1. The guardian, or any person interested in the estate of the ward, shall file a verified petition showing, in the case of an application to mortgage real property, the following matters: the particular purpose or purposes for which it is proposed to make the mortgage, which shall be either to pay the debts, costs and charges of maintenance, charges of administration, or to pay, reduce, extend, or renew some lien or mortgage already subsisting on said realty, or some part thereof, or for the purpose of benefiting or improving the real estate of the ward; a statement of such debts, charges, costs of administration, or liens or mortgages to be paid, reduced, extended, or renewed, or the purpose and advisability of improving the real estate, as the case may be; the advantage that may accrue to the state from raising money, the amount proposed to be raised, together with the general description of the property proposed to be mortgaged, and the names of the ward and next of kin, if any, so far as known to the petitioner. In the case of an application to lease or grant an easement for right of way, including an application to make an oil and gas lease, said petitioner shall show the advantage that may accrue to the estate from giving the lease an easement for right of way; a general description of the property proposed to be leased or the easement for right of way to be granted; the terms, rental and general conditions of the proposed lease or right of way to be granted; and the names of the ward and next of kin, so far as known to the petitioner.

2. Thereafter the same procedure shall be had in all respects as is provided by the laws of Montana relating to the mortgaging or leasing of the real estate of a decedent, and the following sections are hereby expressly made applicable to the mortgaging or leasing of a ward's property by a guardian: section 91-3101, sections 91-3103 to 91-3109, inclusive.

**History:** En. Sec. 1, Ch. 48, L. 1905; re-en. Sec. 7779, Rev. C. 1907; amd. Sec. 2, Ch. 59, L. 1921; re-en. Sec. 10427, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1947; amd. Sec. 1, Ch. 225, L. 1955.

the reference to 91-3103 to 91-3109, inclusive for 91-3103 to 91-3107 and 91-3109.

#### **Noncompliance with Law**

Although guardian did not comply with the procedure outlined in the leasing of the ward's land, he will not be penalized when there is no showing of any loss or detriment to the estate by reason of such noncompliance. *Grauman v. Chambers*, 122 M 31, 198 P 2d 629, 635.

#### **Amendment**

The 1955 amendment inserted all references to the granting of a right of way or easement therefor; authorized the making of oil and gas leases, and substituted

### **CHAPTER 50—SALE OF PROPERTY BY GUARDIANS—INVESTMENT OF PROCEEDS**

**91-5013. (10440) Proceedings to conform to certain provisions of code.**

#### **References**

Cited or applied in Guardianship of Reid, 128 M 197, 271 P 2d 1031, 1037.



CHAPTER 52—GUARDIANSHIP—GENERAL AND MISCELLANEOUS  
PROVISIONS

**91-5210. (10463) Orders to be entered in minutes—provisions, etc.**

**References**

Cited in Guardianship of Reid, 128 M  
197, 271 P 2d 1031, 1037.

## TITLE 92—WORKMEN'S COMPENSATION ACT

- Chapter 1. Industrial accident board—creation and powers, 92-104, 92-108, 92-116.  
7. Compensation for various injuries—amount—payment, 92-701 to 92-709, 92-709A, 92-715.  
8. Miscellaneous regulations—powers of board—rehearings and appeals, 92-807, 92-814.1, 92-819, 92-823, 92-827.  
9. Compensation plan No. 1, 92-902.  
10. Compensation plan No. 2, 92-1003, 92-1005.  
11. Compensation plan No. 3, 92-1101, 92-1103 to 92-1105, 92-1110, 92-1112, 92-1114.  
13. Occupational disease act, 92-1301 to 92-1368.

### CHAPTER 1—INDUSTRIAL ACCIDENT BOARD—CREATION AND POWERS

- Section 92-104. Industrial accident board—compensation—terms and salaries.  
92-108. Ex officio members to receive no additional compensation.  
92-116. Expenses to be paid from what fund.

#### 92-101. (2816) Name of act—what each part to contain.

##### Construction of Act

The act must be construed liberally in favor of the claimant, and to authorize recovery the law does not require demonstra-

tion or such a degree of proof as, excluding possibility of error, produces absolute certainty. *Murphy v. Anaconda Co.*, 133 M 198, 321 P 2d 1094, 1097.

**92-104. (2819) Industrial accident board — compensation — terms and salaries.** There is hereby created a board to consist of three (3) members. The commissioner of labor and industry shall be one (1) member, the director of the bureau of vocational rehabilitation shall be one (1) member, and one (1) member shall be appointed by the governor, by and with the consent of the senate. The board shall be known as the industrial accident board and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be four (4) years and until his successor shall have been appointed and confirmed. He shall receive an annual salary of seven thousand dollars (\$7,000.00), payable monthly and shall be chairman of the board. The board shall elect one of their own number as treasurer of the board.

**History:** En. Sec. 2, Ch. 96, L. 1915; amd. Sec. 1, Ch. 95, L. 1919; amd. Sec. 1, Ch. 254, L. 1921; re-en. Sec. 2819, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1953; amd. Sec. 1, Ch. 231, L. 1959.

##### Amendments

The 1953 amendment completely rewrote this section. Prior to amendment it read: "There is hereby created a board to consist of three members; the commissioner of agriculture, labor, and industry shall be one member; the state auditor shall be one member, and one member shall be appointed by the governor, which board shall be known as the industrial accident board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall

have been appointed and qualified. He shall receive an annual salary of five thousand dollars, payable monthly, and shall be chairman of the board. The board shall elect one of their number as treasurer of the board."

The 1959 amendment substituted "the director of the bureau of vocational rehabilitation" for "the commissioner of agriculture" and deleted a proviso which appeared at the end of the section and read as follows: "provided, however, that the provisions of this act shall not be applicable to the chairman of the board until the expiration of term of the present chairman of the board."

##### Repealing Clause

Section 2 of Ch. 161, Laws 1953 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 161, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

**Appointment of Governor**

Prior to the enactment of chapter 161, Laws of 1953 an appointment by the governor to the board was effective at once by the governor's act alone. By chapter 161 is added the condition that an appointment to the board by the governor is neither complete nor effective until the consent of the senate has been given. *State v. Swanberg*, 130 M 202, 299 P 2d 446, 448.

An appointment made by the governor on May 1, 1955, which was during a time when the senate was not in session was not effective since it was not with the consent of the senate. The incumbent would continue to hold the office. Section

7, article 7 of the Constitution, which authorizes the governor to make recess appointments when a vacancy occurs has reference only to such vacancies which leave the office without anyone to discharge the duties and does not apply to a case where the incumbent holds until his successor is elected or appointed and qualified and is discharging the duties of his office. *State v. Swanberg*, 130 M 202, 299 P 2d 446, 448.

**Construction**

Chapter 161, Laws of 1953 did not create a new board nor a new office but preserved intact the old board which had functioned as such since 1915 but provided for a change only in the personnel of the board, and of the conditions laid down under which the governor might appoint to that board. *State v. Swanberg*, 130 M 202, 299 P 2d 446, 452.

**92-108. (2823) Ex officio members to receive no additional compensation.** Neither the commissioner of labor and industry nor the director of the bureau of vocational rehabilitation shall receive any additional compensation for the duties imposed upon them by this act.

**History:** En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2823, R. C. M. 1921; amd. Sec. 2, Ch. 231, L. 1959.

tor of the bureau of vocational rehabilitation" for "state auditor."

**Amendment**

The 1959 amendment substituted "direc-

**Repealing Clause**

Section 3 of Ch. 231, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**92-109. (2824) Quorum—powers in case of vacancy—hearings, etc.**

**References**

Cited or applied in *Gaffney v. Industrial*

Accident Board, 129 M 394, 287 P 2d 256, 261.

**92-116. (2831) Expenses to be paid from what fund.** The industrial administration fund provided by section 92-837 shall consist of the following:

(1) All fees provided in section 92-119, Revised Codes of Montana, 1947;

(2) All assessments paid to the board by employers who elect to become bound by Plan No. 1 of this act;

(3) All assessments paid to the board by insurers who insure employers under Plan No. 2 of the act;

(4) All fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(5) All assessments levied against the industrial insurance fund as provided by this act.

Said fund shall be divided into two (2) accounts, to be known, respectively, as the general account and the industrial insurance fund account. The general account shall be credited with all of the assessments and fees described in items (1), (2), (3) and (4) above. The assessments described in item (5) above shall be allocated between and credited to, the general account and the industrial insurance fund account, respectively, in the



manner and proportions hereinafter provided. The general account shall be debited with expenses incurred by the board in the general administration of the provisions of this act, including the salaries of its members, officers and employees, and the actual and necessary traveling expenses and disbursements of such members, officers and employees, incurred while on the business of the board either within or without the state, other than any such salaries, disbursements and expenses, or portions thereof, incurred in the operation or administration of the industrial insurance fund. The industrial insurance fund account shall be debited with all expenses, disbursements and salaries which are incurred in the administration or operation of the industrial insurance fund, including a portion of the salaries of the members of the board and its officers and employees, commensurate to the time spent by them on the business of such fund, and also the cost of inspections and examinations of places of employment covered under Plan No. 3. The funds in each of said accounts shall be used exclusively for the purposes herein described with respect to each such account, and any balance remaining in either of said accounts shall not be transferred to the other. Disbursements from the industrial administration fund shall be made after being approved by the board upon claim therefor to be audited and approved by the state board of examiners.

At the beginning of each fiscal year the board shall levy against the industrial insurance fund an assessment in an amount not exceeding ten per cent (10%) of the gross annual direct premium income of the said industrial insurance fund for the previous fiscal year, less return premiums, and said assessment shall be paid forthwith by the treasurer into the industrial administration fund. The amount of said assessment shall be allocated and credited as follows, to-wit: Sixty-two per cent (62%) thereof to the said industrial insurance fund account, and the balance thereof to the said general account.

**History:** En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2831, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1957.

#### **Amendment**

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

## **CHAPTER 2—DEFENSES—ELECTION TO COME UNDER ACT**

### **92-207. (2841) Employers engaged in hazardous industries—election.**

#### **Duty of Board to Advise Employee**

Where the industrial accident board received an accident notice from the employer and a written inquiry from the coal mining employee within a year from the date of accident, the board had a duty to notify the employee as to the requirements for the timely filing of his claim.

*Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 871.

#### **References**

Cited or applied in *State v. Industrial Accident Board*, 130 M 272, 300 P 2d 954, 958.

### **92-208. (2842) Employee engaged in hazardous occupation, etc.**

#### **References**

Cited or applied in *State v. Industrial*

*Accident Board*, 130 M 272, 300 P 2d 954, 959.

## CHAPTER 3—HAZARDOUS OCCUPATIONS TO WHICH ACT APPLIES

**92-301. (2847) Act applies to all inherently hazardous occupations, etc.****Accidents Occurring Outside of State**

Where employer and employee are residents of Montana, and such relationship arose in Montana but the employee is injured while working outside of the state the Montana act would be applicable and the industrial accident board would have jurisdiction. *State v. Industrial Accident*

Board, 130 M 272, 300 P 2d 954. (Dissenting opinion, 130 M 272, 300 P 2d 954, 963.)

When limitation period begins to run against claim under Workmen's Compensation or Occupational Diseases Act for contracting of disease. 11 ALR 2d 297.

## CHAPTER 4—MEANING OF WORDS EMPLOYED IN ACT

**92-410. (2862) Employer defined.****References**

Cited or applied in *State v. Industrial*

Accident Board, 130 M 272, 300 P 2d 954, 957.

**92-411. (2863) Employee and workman defined.****Accidents Occurring Outside of State**

Where employer and employee are residents of Montana, and such relationship arose in Montana but the employee is injured while working outside of the state, the Montana act would be applicable and the industrial accident board would have jurisdiction. *State v. Industrial Accident Board*, 130 M 272, 300 P 2d 954. (Dissenting opinion, 130 M 272, 300 P 2d 954, 963.)

Employees who are resident citizens of the state, employed and paid in Montana through the only office of their employer, a Montana corporation, are entitled to the benefits of the Workmen's Compensation Laws of Montana although they were injured in another state. *State v. Industrial Accident Board*, 130 M 272, 300 P 2d 954.

(Dissenting opinion, 130 M 272, 300 P 2d 954, 963.)

**Independent Contractor**

In an action to recover an assessment made on compensation paid to truck drivers whom employer claimed were the employees of an independent contractor, it was proper to give an instruction that the board was not a party to the contract with the independent contractor and was not bound to recognize the contracting parties but could assert its rights against "party employing the laborer". *Jeffries Coal Co. v. Montana State Industrial Accident Board*, 131 M 511, 312 P 2d 128, 134.

Public officers as within statute. 5 ALR 2d 415.

**92-413. (2865) Beneficiary defined.****References**

Cited or applied in the dissenting opin-

ion in *Tabor v. Industrial Acc. Fund*, 126 M 240, 247 P 2d 472, 474.

**92-414. (2866) Major dependent defined.****"Dependent"**

Dependency does not mean absolute dependency for the necessities of life, but rather that the applicant looked to and relied on the contributions of the workman, in whole or in part, as a means of support and maintenance, and a person may be a dependent although able to maintain himself without any aid from

the contributor. Thus, where the decedent had agreed to contribute \$40 per week to his parents, they were fully and reasonably justified in looking to and relying on these contributions as a means of support and constitutes them dependents within the statute. *Tabor v. Industrial Acc. Fund*, 126 M 240, 247 P 2d 472, 473.

**92-415. (2867) Minor dependent defined.****References**

Cited or applied in the dissenting opin-

ion in *Tabor v. Industrial Acc. Fund*, 126 M 240, 247 P 2d 472, 474.

**92-418. (2870) Injury or injured defined.****Aggravation of Pre-Existing Condition**

Employee who injured leg while loading freight car was entitled to workmen's com-

pensation where disability was due to accident which aggravated and accelerated arthritic condition. *Birnie v. United States*

Gypsum Co., — M —, 328 P 2d 133, 135, 136.

That an employee was suffering from or afflicted with a pre-existing disease or disability does not preclude compensation if the disease or disability was lit up, aggravated or accelerated by an industrial injury. *Birnie v. United States Gypsum Co.*, — M —, 328 P 2d 133, 136.

#### **Disease Aggravated or Accelerated by Accident**

The rule that the employer takes the employee as he finds him is well established. The fact that an employee was suffering from a pre-existing disease or disability does not preclude compensation if the disease or disability was aggravated or accelerated by an industrial injury which arose out of and in the course of the employment. *Gaffney v. Industrial Accident Board*, 129 M 394, 287 P 2d 256, 259.

#### **"Fortuitous" Defined**

The word "fortuitous" means happening by chance or accident; coming or occurring unexpectedly or without known cause; and is synonymous with "industrial

accident." *Rathbun v. Taber Tank Lines*, 129 M 121, 283 P 2d 966, 969; *Murphy v. Anaconda Company*, 133 M 198, 321 P 2d 1094.

#### **Heart Failure as an Industrial Accident**

Heart failure brought about by unusual stress and strain in employment amounts to an industrial accident for which an award of compensation should be made. *Rathbun v. Taber Tank Lines*, 129 M 121, 283 P 2d 966, 969.

#### **Pulmonary Embolism—Death Compensable Although No Unusual Strain Beyond the Mere Employment Itself**

Where death resulted from a pulmonary embolism which occurred while the employee was engaged in his usual employment, it was compensable, even though there was no unusual strain or exertion involved. *Murphy v. Anaconda Company*, 133 M 198, 321 P 2d 1094.

#### **References**

Cited or applied in *Peitz v. Industrial Accident Board*, 127 M 316, 264 P 2d 709, 712.

### **92-438. (2890) Independent contractor defined.**

#### **References**

Cited or applied in *Jeffries Coal Co. v.*

*Montana State Industrial Accident Board*, 131 M 511, 312 P 2d 128, 130.

## **CHAPTER 5—COMPENSATION TO CERTAIN HEIRS AND BENEFICIARIES**

### **92-503. (2893) Compensation not paid to nonresident major or minor, etc.**

Voluntary payment of compensation under statute of one state as bar to claim on ground of reduction of claim of com-

ensation under statute of another state. 8 ALR 2d 628.

## **CHAPTER 6—CLAIMS—LIABILITY FOR INJURY UNDER DIFFERENT PLANS OF ACT**

### **92-601. (2899) Claims must be presented within what time.**

#### **Duty of Board to Advise Employee**

Where the industrial accident board had received notice of an accident from the employer and had authorized medical care upon a written inquiry made by the employee within one year from the date of accident, the board could not assert the statute of limitations when the employee filed a formal claim six days after the year elapsed since the board had a duty fully to advise the employee as to all requirements when he first made inquiry. *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866.

#### **Equitable Estoppel**

Where employee did not file his written claim for compensation within 12 months

from the date of the happening of the accident because he was not examined thoroughly during that time, although he repeatedly asked that X-Rays be given, the doctrine of equitable estoppel should apply, and the employee should receive his compensation. *McCoy v. Mike Horse Mining & Milling Co.*, 126 M 435, 252 P 2d 1036, 1039.

The doctrine of equitable estoppel is a flexible one, founded in equity and good conscience; its object is to prevent a party from taking an unconscionable advantage of his own wrong while asserting his strict legal rights. *Levo v. General-Shea-Morrison*, 128 M 570, 280 P 2d 1086, 1090.

Equitable estoppel may prevent a defendant from contending that a claim was



not filed in time. *Levo v. General-Shea-Morrison*, 128 M 570, 280 P 2d 1086.

Under the facts of the case the employee's failure to file his claim within the statutory time should not operate to

bar his claim, since his failure was brought about by the direct intervention of the employer's agents. *Levo v. General-Shea-Morrison*, 128 M 570, 280 P 2d 1086.

## 92-610. (2907) Contracts or agreements for hospital benefits, etc.

### References

Cited in *McCoy v. Mike Horse Mining*

& Milling Co., 126 M 435, 252 P 2d 1036, 1038.

## 92-614. (2911) Who liable for injuries under the different plans, etc.

### Aggravation or Acceleration of Disease

The rule that the employer takes the employee as he finds him is well established. The fact that an employee was suffering from a pre-existing disease or disability does not preclude compensation if the disease or disability was aggravated or accelerated by an industrial injury which arose out of and in the course of the employment. *Gaffney v. Industrial Accident Board*, 129 M 394, 287 P 2d 256, 259.

### Decision of Board—Presumption

Where a decision of the board as to whether an accident arose out of or in the course of the employment involved the consideration of conflicting evidence as to essential facts or the deduction of permissible but diverse inferences therefrom, its solution of such conflict is presumed to be correct, and the burden of proof is upon the party attacking it to show they were erroneous. *Partoll v. Anaconda Copper Min. Co.*, 122 M 305, 203 P 2d 974, 977.

### Heart Failure

Heart failure may be classified as an industrial accident where it is brought about by unusual stress and strain in employment. *Rathbun v. Taber Tank Lines*, 129 M 121, 283 P 2d 966, 969.

### Injury Arising Out of and in the Course of Employment

If act resulting in injury is incidental to the employment, the fact that it was done during the lunch period does not prevent the award of compensation. *Geary v. Anaconda Copper Min. Co.*, 120 M 485, 188 P 2d 185, 187.

Injuries sustained after the completion

of the regular work by an employee subject to call may in a proper case be compensable as an injury arising out of and in the course of employment. *Geary v. Anaconda Copper Min. Co.*, 120 M 485, 188 P 2d 185, 187.

Where employees of defendant were permitted to play handball in garage and had played such game daily during their lunch hour for a period of about three months, and employees were required to eat their lunches on the premises so as to be there if a call came, and only employees participated in the game, an injury caused when an employee, while jumping for the ball, accidentally struck another breaking his glasses, was sufficiently incidental to the employment to have arisen out of and in the course of his employment. *Geary v. Anaconda Copper Min. Co.*, 120 M 485, 188 P 2d 185, 187.

No exact formula can be laid down which will automatically solve every case involving the question whether an accident arises out of and in the course of the employment, but each case must depend upon its particular facts and circumstances. *Partoll v. Anaconda Copper Min. Co.*, 122 M 305, 203 P 2d 974, 977.

### Unusual Strain or Exertion Not Necessary

An unexpected injury received in the ordinary performance of a duty in the usual manner is an injury by accident and, if there is medical causation, it is compensable. *Murphy v. Anaconda Company*, 133 M 198, 321 P 2d 1094, 1101.

### References

Cited or applied in *State v. Industrial Accident Board*, 130 M 272, 300 P 2d 954, 958.

## CHAPTER 7—COMPENSATION FOR VARIOUS INJURIES—AMOUNT—PAYMENT

- Section 92-701. Compensation for injury producing temporary total disability.  
 92-702. Compensation for injury producing total disability permanent in character.  
 92-703. For partial disability.  
 92-704. Compensation for injury causing death.  
 92-705. Providing for payment of burial expense.

- 92-706. Medical and hospital services and such other treatment as approved by the board to be furnished.
- 92-707. Compensation from what date paid.
- 92-708. Compensation to run consecutively—major and minor dependents not residing in the United States—manner of payment.
- 92-709. Compensation in case of specified injuries.
- 92-709A. Permanent and total disability created by a second injury—second injury fund.
- 92-715. Monthly payments converted into a lump sum.

**92-701. (2912) Compensation for injury producing temporary total disability.** Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars (\$28.00) per week; where the injured employee has a wife, or child, or father or mother, or brother or sister residing within the United States, who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars (\$30.50) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-three and 50/100 dollars (\$33.50) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-six and 50/100 (\$36.50) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty dollars (\$40.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing in the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-two and 50/100 dollars (\$42.50) per week, and subject in all cases to a minimum compensation of twenty-five and 50/100 dollars (\$25.50) per week, and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding three hundred (300) weeks from the date of injury.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 100, L. 1919; re-en. Sec. 2912, R. C. M. 1921; amd. Sec. 10, Ch. 121, L. 1925; amd. Sec. 12, Ch. 177, L. 1929; amd. Sec. 1, Ch. 230, L. 1947; amd. Sec. 1, Ch. 7, L. 1949; amd. Sec. 1, Ch. 48, L. 1951; amd. Sec. 1, Ch. 38, L. 1953; amd.

Sec. 1, Ch. 253, L. 1955; amd. Sec. 1, Ch. 234, L. 1957.

#### **Amendments**

The 1949 amendment raised the maximum compensation in each instance and the minimum compensation by \$2.50.

The 1951 amendment raised the maximum compensation in each instance and the minimum compensation by \$1.50.

The 1953 amendment raised the maximum compensation in each instance and the minimum compensation by \$3.00.

The 1955 amendment raised the maximum compensation in each instance and the minimum compensation by \$2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: \$28.00 from \$26.50, \$30.50 from \$28.50, \$33.50 from \$29.50, \$36.50 from \$30.50, \$40.00 from \$31.50, \$42.50 from \$32.50 and the minimum compensation, \$25.50 from \$19.50 and inserted the words "increases by birth, or" appearing before the last word of the first sentence.

#### Operation and Effect

The schedule of payments set forth in section 1, chapter 253, Laws 1955 did not become effective until July 1, 1955 and there is nothing in the act to show any in-

tention of the legislature to give a retrospective application thereto. *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 872.

#### Wisconsin Decision

An award for temporary total disability was not final as to compensation and left employee free to pursue his remedy in Wisconsin which could also allow for temporary total disability allowing a credit for payments made under Montana award. *Spietz v. Industrial Commission*, 251 Wis. 168, 28 N.W. 2d 354.

#### References

Cited or applied in *Peitz v. Industrial Accident Board*, 127 M 316, 264 P 2d 709, 712.

Pleading aggravation of a pre-existing physical condition in workmen's compensation cases. 32 ALR 2d 1459.

**92-702. (2913) Compensation for injury producing total disability permanent in character.** Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars (\$28.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars (\$30.50) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters, residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-three and 50/100 dollars (\$33.50) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-six and 50/100 dollars (\$36.50) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty dollars (\$40.00) per week; where the injured employee has a wife and four (4) children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-two and 50/100 dollars



(\$42.50) per week; and subject in all cases to a minimum compensation of twenty-five and 50/100 dollars (\$25.50) per week; and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding five hundred (500) weeks from the date of injury.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 5, Ch. 100, L. 1919; re-en. Sec. 2913, R. C. M. 1921; amd. Sec. 11, Ch. 121, L. 1925; amd. Sec. 13, Ch. 177, L. 1929; amd. Sec. 2, Ch. 230, L. 1947; amd. Sec. 2, Ch. 7, L. 1949; amd. Sec. 2, Ch. 48, L. 1951; amd. Sec. 2, Ch. 38, L. 1953; amd. Sec. 2, Ch. 253, L. 1955; amd. Sec. 2, Ch. 234, L. 1957.

#### Amendments

The 1949 amendment raised the maximum compensation in each instance and the minimum compensation by \$2.50.

The 1951 amendment raised the maximum compensation in each instance and the minimum compensation by \$1.50.

The 1953 amendment raised the maximum compensation in each instance and the minimum compensation by \$3.00.

The 1955 amendment raised the maximum compensation in each instance and the minimum compensation by \$2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: \$28.00 from \$26.50, \$30.50 from \$28.50, \$33.50 from \$29.50, \$36.50 from \$30.50, \$40.00 from \$31.50, \$42.50 from \$32.50 and the minimum compensation, \$25.50 from \$19.50 and inserted the words "increases by birth, or" appearing before the last word of the first sentence.

#### Date Benefits Commence

Where claimant continued to work for several years after the accident, but later became totally disabled, compensation for the permanent injury became payable as of the date on which he was forced to discontinue employment. *Gaffney v. Industrial Accident Board*, 129 M 394, 324 P 2d 1063, 1065.

#### Interest

In the absence of a specific statute authorizing the charging of interest on accrued compensation payments, no interest may be assessed or charged. *Gaffney v. Industrial Accident Board*, 129 M 394, 324 P 2d 1063, 1066.

#### Rates and Schedules Used to Determine Monetary Liability

The rates and schedules to be used to determine the monetary liability are those rates and schedules in effect on the date of the accident. *Gaffney v. Industrial Accident Board*, 129 M 394, 324 P 2d 1063, 1065.

#### References

Cited or applied in *Peitz v. Industrial Accident Board*, 127 M 316, 264 P 2d 709, 712; *Spieth v. Stuart*, 130 M 216, 299 P 2d 106, 108.

**92-703. (2914) For partial disability.** Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of twenty-eight dollars (\$28.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty and 50/100 dollars (\$30.50) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty-three and 50/100 dollars (\$33.50)

per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty-six and 50/100 dollars (\$36.50) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty dollars (\$40.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two thirds per centum (66 2/3%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty-two and 50/100 dollars (\$42.50) per week; not exceeding however, the maximum compensation allowed in cases of total disability, and not exceeding in amount or duration the total compensation provided in this act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of permanent partial disability, and fifty (50) weeks in cases of temporary partial disability, subject to change when the number of dependents increases by birth, or decreases, provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of such member.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 6, Ch. 100, L. 1919; re-en. Sec. 2914, R. C. M. 1921; amd. Sec. 2, Ch. 177, L. 1929; amd. Sec. 3, Ch. 230, L. 1947; amd. Sec. 3, Ch. 7, L. 1949; amd. Sec. 3, Ch. 48, L. 1951; amd. Sec. 3, Ch. 38, L. 1953; amd. Sec. 3, Ch. 253, L. 1955; amd. Sec. 3, Ch. 234, L. 1957.

#### Amendments

The 1949 amendment raised the maximum compensation in each instance by \$2.50.

The 1951 amendment raised the maximum compensation in each instance by \$1.50.

The 1953 amendment raised the maximum compensation in each instance by \$3.00.

The 1955 amendment raised the maximum compensation in each instance by \$2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: \$28.00 from \$26.50, \$30.50 from \$28.50, \$33.50 from \$29.50, \$36.50 from

\$30.50, \$40.00 from \$31.50, \$42.50 from \$32.50; inserted the words "in amount or duration" after the words "and not exceeding" near the end of the first sentence and in the second sentence inserted the words "increases by birth, or" and added the proviso clause.

#### Benefits Under Public Employees Retirement Act

Where a person is entitled to benefits under both the disability retirement act and the workmen's compensation act, and the award of the industrial accident board is for permanent partial disability, the retirement board was without authority to deduct such amount from the disability retirement allowance since it is only authorized under section 68-901, where the award of the industrial accident board is for total and permanent disability. State ex rel. Ebel v. Schye, 130 M 537, 305 P 2d 350, 354.

#### Construction

The clause in this section "not exceed-

ing however, the maximum compensation allowed in cases of total disability, and not exceeding the total compensation provided in this act for the total loss of the member causing such partial disability" has reference only to the total weekly compensation. It has nothing to do with the length of time the award must be paid. *Spieth v. Stuart*, 130 M 216, 299 P 2d 106, 108, overruling anything in conflict therewith found in *Novak v. Industrial Accident Board*, 73 M 196, 235 P 756.

Under this section a claimant must show loss of earnings, while under section 92-709 he is entitled to an arbitrary sum—a percentage of his salary—as compensation for the loss of the member regardless of loss of earning or earning capacity. Construing this section and section 92-709 most favorably to the workman, he may take his choice by proceeding under

this section and prove loss of earnings, or he may proceed under section 92-709 and obtain the arbitrary amount. *Spieth v. Stuart*, 130 M 216, 299 P 2d 106, 108, overruling anything in conflict therewith found in *Novak v. Industrial Accident Board*, 73 M 196, 235 P 756.

Actual earnings after the injury are prima facie evidence of "ability to earn" and not the sole criterion of earning capacity, but the criterion is to be followed in the absence of a strong showing that it is not a reliable standard. *Greenfield v. Industrial Accident Board*, 133 M 136, 320 P 2d 1000, 1003.

#### References

Cited or applied in *Shaffer v. Midland Empire Packing Co.*, 127 M 211, 259 P 2d 340, 341; *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 872.

**92-704. (2915) Compensation for injury causing death.** For beneficiaries residing within the United States: Where decedent leaves one (1) beneficiary, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars (\$28.00) per week; where decedent leaves two (2) beneficiaries, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars (\$30.50) per week; where decedent leaves three (3) beneficiaries, sixty per centum (60%) of the wages received at the time of the injury subject to a maximum compensation of thirty-three and 50/100 dollars (\$33.50) per week; where decedent leaves four (4) beneficiaries, sixty-two and one-half per centum (62½%) of the wages received at the time of the injury, subject to a maximum compensation of thirty-six and 50/100 dollars (\$36.50) per week; where decedent leaves five (5) beneficiaries, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars (\$40.00) per week; where decedent leaves six (6) or more beneficiaries, sixty-six and two-thirds per centum (66 2/3%) of the wages received at the time of the injury, subject to a maximum compensation of forty-two and 50/100 dollars (\$42.50) per week; and subject in all such cases to a minimum compensation of twenty-five and 50/100 dollars (\$25.50) per week.

For beneficiaries residing outside of the United States: Where decedent leaves one (1) beneficiary, forty per centum (40%) of the compensation which would be payable to such beneficiary, if residing within the United States; where decedent leaves two (2) beneficiaries, forty-five per centum (45%) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves three (3) beneficiaries, forty-seven and one-half per centum (47½%) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves four (4) or more beneficiaries, fifty per centum (50%) of the compensation which would be payable to such beneficiaries, if residing within the United States.

If decedent leaves no beneficiaries, then compensation shall be payable



as follows: To his major dependents, if any, residing in the United States at the date of the happening of the injury; where decedent leaves one (1) major dependent, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars (\$28.00) per week; where decedent leaves two (2) major dependents, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars (\$30.50) per week.

If the decedent leaves no major dependents, compensation shall be payable to his minor dependents, if any, if residing within the United States at the time of the happening of the injury, as follows: Where decedent leaves one (1) minor dependent, thirty per centum (30%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars (\$28.00); where decedent leaves two (2) minor dependents, thirty-five per centum (35%) of the wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars (\$30.50); where decedent leaves three (3) or more minor dependents, forty per centum (40%) of the wages received at the time of the injury, subject to a maximum compensation of thirty-six and 50/100 dollars (\$36.50) per week.

If the decedent leaves no major or minor dependents a lump sum in the amount of three thousand and no/100 dollars (\$3,000.00) shall be payable to his surviving parent or parents.

All such payments of compensation provided for in this section shall be subject to a maximum compensation of forty-two and 50/100 dollars (\$42.50) per week for a period not exceeding five hundred (500) weeks and subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and provided, further, that compensation payable to major or minor dependents shall not exceed the amount of the dependency.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 7, Ch. 100, L. 1919; re-en. Sec. 2915, R. C. M. 1921; amd. Sec. 12, Ch. 121, L. 1925; amd. Sec. 14, Ch. 177, L. 1929; amd. Sec. 4, Ch. 230, L. 1947; amd. Sec. 4, Ch. 7, L. 1949; amd. Sec. 4, Ch. 48, L. 1951; amd. Sec. 4, Ch. 38, L. 1953; amd. Sec. 4, Ch. 253, L. 1955; amd. Sec. 4, Ch. 234, L. 1957.

#### Compiler's Notes

Section 5 of Ch. 7, L. 1949 is compiled as section 92-707.

Section 5 of Ch. 48, L. 1951 is compiled as section 92-709.

Section 5 of Ch. 38, L. 1953 is compiled as section 92-709.

Section 5 of Ch. 253, L. 1955 is compiled as section 92-706.

#### Amendments

The 1949 amendment raised the maximum compensation in each instance and the minimum compensation by \$2.50 and raised the maximum period provided in the last paragraph from 400 to 500 weeks.

The 1951 amendment raised the maximum compensation in each instance and the minimum compensation by \$1.50.

The 1953 amendment raised the maximum compensation in each instance and the minimum compensation by \$3.00 and inserted the words "of the" appearing in the third paragraph after the words "United States at the date."

The 1955 amendment raised the maximum compensation in each instance and the minimum compensation by \$2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: \$28.00 from \$26.50, \$30.50 from \$28.50, \$33.50 from \$29.50, \$36.50 from \$30.50, \$40.00 from \$31.50, \$42.50 from \$32.50 and the minimum compensation, \$25.50 from \$19.50; in the fourth paragraph inserted the words "subject to a maximum compensation of twenty-eight dollars (\$28.00)," "subject to a maximum compensation of thirty and 50/100 dollars (\$30.50)" and "subject to a maximum compensation of thirty-six and 50/100 dollars (\$36.50) per week" each appearing

respectively after the word "injury"; paragraph inserted the words "increases added the fifth paragraph and in the sixth by birth, or."

**92-705. (2916) Providing for payment of burial expense.** There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding five hundred dollars (\$500.00) and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R. C. M. 1921; amd. Sec. 13, Ch. 121, L. 1925; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957.

The 1957 amendment raised the maximum amount payable for funeral expenses from \$350.00 to \$500.00.

#### 1945 Amendment Unconstitutional

The 1945 amendment to this section by chapter 213 is unconstitutional since the legislature did not follow the constitutional mandate of having the bill printed for use of the members and that fact shows affirmatively on the journals. O'Bannon v. Gustafson, 130 M 402, 303 P 2d 938.

#### Amendments

The 1953 amendment raised the maximum amount payable for funeral expenses from \$250.00 to \$350.00.

**92-706. (2917) Medical and hospital services and such other treatment as approved by the board to be furnished.** In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

During the first thirty-six (36) months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the board, not exceeding in amount the sum of twenty-five hundred dollars (\$2500.00) provided however, that in cases of total disability where apportionment of such sum does not meet all hospitalization expenses, the board may allow an additional amount for such additional hospital and medical expenses as in special cases it may deem proper. The employer or insurer or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished or if the employee is under hospital contract as provided in section 92-610 (2907) of this act.

When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of an injured employee in a particular case such injured employee may, anytime, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

And be it further provided, that where an injury arising out of and received in the course of employment necessarily results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the industrial accident board may, in its discretion, order that an artificial member be furnished to supply the loss of any such member or members so lost. Such artificial member shall be furnished at the expense of the employer, operating under plan one, or

the insurer, operating under plan two, or the industrial accident fund where the employer is operating under plan three. The replacement of an artificial member so furnished shall be required every five (5) years, if necessary, unless the board shall determine a replacement is needed within a shorter period.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 3, Ch. 196, L. 1921; re-en. Sec. 2917, R. C. M. 1921; amd. Sec. 14, Ch. 121, L. 1925; amd. Sec. 15, Ch. 177, L. 1929; amd. Sec. 2, Ch. 139, L. 1931; amd. Sec. 1, Ch. 229, L. 1943; amd. Sec. 2, Ch. 213, L. 1945; amd. Sec. 1, Ch. 41, L. 1949; amd. Sec. 7, Ch. 38, L. 1953; amd. Sec. 5, Ch. 253, L. 1955; amd. Sec. 6, Ch. 234, L. 1957.

#### Compiler's Note

Section 8 of Ch. 38, L. 1953 is compiled as section 92-823.

#### Amendments

The 1949 amendment raised the maximum amount allowed for treatment from \$500 to \$1,000 and substituted the words "be required every five (5) years, if necessary" at the end of the section for "not be required unless made necessary by a subsequent industrial accident arising out of and suffered in the course of employment."

The 1953 amendment increased from 9 to 12 months the period for which hospital and medical services be rendered and increased the maximum sum for such services from \$1,000 to \$1,500; substituted the word "and" for "or" appearing between the words "hospital" and "medical facilities" in the third paragraph; increased the maximum amount payable for artificial members as follows: "Hand or arm to elbow" from \$150.00 to \$250.00, "Arm above elbow" from \$175.00 to \$300.00, "Foot or leg" from \$150.00 to \$250.00, "Eye" from \$10.00 to \$25.00 and "teeth" from \$125.00 to \$175.00.

The 1955 amendment increased from 12 to 18 months the period for which hospital and medical services be rendered; raised the maximum sum for such services from \$1500 to \$2500 and added the proviso allowing for additional hospital expenses of \$1,000 in cases of total disability.

The 1957 amendment in the second paragraph increased from 18 to 36 months the

period for which hospital and medical services be rendered and in the proviso substituted "an additional amount for such additional hospital and medical expenses as in special cases it may deem proper" for "an additional amount up to one thousand dollars (\$1,000.00) for such additional hospital expenses"; in the fourth paragraph deleted former provisions concerning maximum amount payable for artificial members which read "The expense of furnishing any such member shall not exceed the following amounts: Hand or arm to elbow—two hundred fifty dollars (\$250.00). Arm above elbow—three hundred dollars (\$300.00). Foot or leg—two hundred fifty dollars (\$250.00). Eye—twenty-five dollars (\$25.00). Teeth—one hundred seventy-five dollars (\$175.00)" and in the last sentence inserted the words "unless the board shall determine a replacement is needed within a shorter period."

#### Repealing Clause

Section 2 of Ch. 41, L. 1949 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 41, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 21, 1949.

#### 1945 Amendment Unconstitutional

Chapter 213 of Laws 1945 is unconstitutional since the legislature failed to follow the constitutional mandate of having the bill printed for use of the members and that fact shows affirmatively on the journals. *O'Bannon v. Gustafson*, 130 M 402, 303 P 2d 938.

#### References

Cited in *McCoy v. Mike Horse Mining & Milling Co.*, 126 M 435, 252 P 2d 1036, 1038.

**92-707. (2918) Compensation from what date paid.** When an injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, no compensation shall be allowed or paid during the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues six [6] weeks, compensation shall be paid from the date of injury. Where the injured employee has a beneficiary or



a major or minor dependent residing within the United States who would be entitled to compensation in case of his death, no compensation shall be paid for the first week of any injury, but if disability continues three [3] weeks, compensation shall be paid from the date of injury; provided, that separate benefits of medical and hospital services shall be furnished from date of injury.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R. C. M. 1921; amd. Sec. 3, Ch. 177, L. 1929; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949.

#### **Amendment**

The 1949 amendment substituted the words "first week" in the first sentence for "first two weeks."

**92-708. (2919) Compensation to run consecutively—major and minor dependents not residing in the United States—manner of payment.** Compensation shall run consecutively and not concurrently and payment shall not be made for two (2) classes of disability over the same period, provided that the total period over which compensation shall be payable for two or more classes of disability, including death, resulting from any compensable injury, shall not extend for a period of more than five hundred (500) weeks, and provided that no compensation shall be paid to a major or minor dependent who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving widow and stepchildren of such widow the compensation shall be divided equally among all beneficiaries. Compensation due to major dependents where there be more than one, shall be divided equitably among them and likewise as to minor dependents, and the question of dependency and amount thereof shall be a question of fact for determination by the board.

**History:** En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R. C. M. 1921; amd. Sec. 15, Ch. 121, L. 1925; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955.

#### **Amendment**

The 1955 amendment inserted the first proviso in this section.

#### **Repealing Clause**

Section 8 of Ch. 253, Laws 1955 re-

#### **1945 Amendment Unconstitutional**

Chapter 213 of Laws 1945 is unconstitutional since the legislature failed to follow the constitutional mandate of having the bill printed for use of the members and that fact shows affirmatively on the journals. *O'Bannon v. Gustafson*, 130 M 402, 303 P 2d 938.

pealed all acts and parts of acts in conflict therewith.

#### **1945 Amendment Unconstitutional**

Chapter 213 of Laws 1945 is unconstitutional since the legislature failed to follow the constitutional mandate of having the bill printed for use of the members and that fact shows affirmatively on the journals. *O'Bannon v. Gustafson*, 130 M 402, 303 P 2d 938.

**92-709. (2920) Compensation in case of specified injuries.** In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act, shall be as follows: Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars (\$28.00) per week; where the injured employee has a wife, or child, or

father or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars (\$30.50) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the wages received at the time of the injury, subject to a maximum compensation of thirty-three and 50/100 dollars (\$33.50) per week; where the injured employee has a wife and two (2) children or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum ( $62\frac{1}{2}\%$ ) of the wages received at the time of injury, subject to a maximum compensation of thirty-six and 50/100 dollars (\$36.50) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars (\$40.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum ( $66\frac{2}{3}\%$ ) of the wages received at the time of the injury, subject to a maximum compensation of forty-two and 50/100 dollars (\$42.50) per week, subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and subject in all cases to a minimum compensation of twenty-five and 50/100 dollars (\$25.50) per week, and shall be paid for the following periods:

For loss of:

One arm at or near shoulder .....	280 weeks
One arm at the elbow .....	240 weeks
One arm between wrist and elbow .....	220 weeks
One hand ....	200 weeks
One thumb and the metacarpal bone thereof .....	75 weeks
One thumb at the proximal joint .....	37 weeks
One thumb at the second distal joint .....	25 weeks
One first finger and the metacarpal bone thereof .....	40 weeks
One first finger at the proximal joint .....	30 weeks
One first finger at the second joint .....	22 weeks
One first finger at the distal joint .....	15 weeks
One second finger and the metacarpal bone thereof .....	37 weeks
One second finger at the proximal joint .....	20 weeks
One second finger at the second joint .....	15 weeks
One second finger at the distal joint .....	8 weeks
One third finger and the metacarpal bone thereof .....	25 weeks
One third finger at the proximal joint .....	15 weeks
One third finger at the second joint .....	10 weeks
One third finger at the distal joint .....	5 weeks
One fourth finger and the metacarpal bone thereof .....	15 weeks

One fourth finger at the proximal joint .....	11 weeks
One fourth finger at the second joint .....	8 weeks
One fourth finger at the distal joint .....	6 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb .....	300 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb .....	200 weeks
One leg between knee and ankle .....	190 weeks
One foot at the ankle .....	180 weeks
One great toe with the metatarsal bone thereof .....	37 weeks
One great toe at the proximal joint .....	18 weeks
One great toe at the second joint .....	12 weeks
One toe other than the great toe with the metatarsal bone thereof .....	16 weeks
One toe other than the great toe at the proximal joint .....	8 weeks
One toe other than the great toe at second or distal joint .....	5 weeks
One eye by enucleation .....	165 weeks
Total blindness of one eye .....	140 weeks
Total loss of hearing, one ear .....	40 weeks
Total loss of hearing, both ears .....	200 weeks

Loss of vision: Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

Total loss of use: Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

Partial loss or partial loss of use: Indemnity benefits for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

In any case in which there shall be a loss, or loss of use, of more than one member as set forth in this section, not amounting to permanent total disability, the award of indemnity benefits shall be for the loss, or loss of use thereof, which awards shall run consecutively, provided, however, that the total award or compensation in no case shall exceed five hundred (500) weeks.

Disfigurement: The board may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars (\$2,500.00) in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services.



History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R. C. M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957.

### Amendments

The 1949 amendment raised the maximum amount of compensation in each instance and the minimum compensation by \$2.50 and also increased the number of weeks for each of the specified injuries.

The 1951 amendment raised the maximum amount of compensation in each instance and the minimum compensation by \$1.50.

The 1953 amendment raised the maximum amount of compensation in each instance and the minimum compensation by \$3.00.

The 1955 amendment increased the maximum amount of compensation in each instance and the minimum compensation by \$2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: \$28.00 from \$26.50, \$30.50 from \$28.50, \$33.50 from \$29.50, \$36.50 from \$30.50, \$40.00 from \$31.50, \$42.50 from \$32.50 and the minimum compensation, \$25.50 from \$19.50; inserted the words "increases by birth, or"; increased the number of weeks in each of the following specified injuries: One arm at or near shoulder, 280 from 250 weeks, one arm at the elbow, 240 from 225 weeks, one arm between wrist and elbow, 220 from 200 weeks, one hand, 200 from 187 weeks, one first finger and the metacarpal bone thereof, 40 from 37 weeks, one first finger at the proximal joint, 30 from 25 weeks, one first finger at the second joint, 22 from 18 weeks, one first finger at the distal joint, 15 from 12 weeks, one second finger at the proximal joint, 20 from 18 weeks, one second finger at the second joint, 15 from 12 weeks, one second finger at the distal joint, 8 from 6 weeks, one fourth finger at the second joint, 8 from 7 weeks, one fourth finger at the distal joint, 6 from 4 weeks, one leg at or near the hip joint as to preclude the use of an artificial limb, 300 from 250 weeks, one leg at or above the knee where stump remains sufficient to permit the use of an artificial limb, 200 from 187 weeks, one leg between knee and ankle, 190 from 175 weeks, one foot at the ankle, 180 from 156 weeks, one toe other than the great toe with the metatarsal bone thereof, 16 from 15 weeks, one toe other than the great toe at the proximal joint, 8 from 7

weeks, one toe other than the great toe at second or distal joint, 5 from 4 weeks, one eye by enucleation, 165 from 150 weeks, total blindness of one eye, 140 from 125 weeks, total loss of hearing, one ear, 40 from 25 weeks, total loss of hearing, both ears, 200 from 150 weeks, and added paragraphs two through six.

### Repealing Clauses

Section 7 of Ch. 7, L. 1949 and Sec. 6 of Ch. 48, L. 1951 repealed all acts and parts of acts in conflict therewith.

### Effective Date

Section 8 of Ch. 7, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 3, 1949.

### 1945 Amendment Unconstitutional

Chapter 213 of Laws 1945 is unconstitutional since the legislature failed to follow the constitutional mandate of having the bill printed for use of the members and that fact shows affirmatively on the journals. *O'Bannon v. Gustafson*, 130 M 402, 303 P 2d 938.

### Construction

Under this section a claimant is entitled to an arbitrary sum—a percentage of his salary—as compensation for the loss of the member regardless of loss of earning or earning capacity, while under section 92-703 a claimant must show loss of earnings. Construing this section and section 92-703 most favorable to the workman, he may take his choice by proceeding under section 92-703 and prove loss of earnings, or he may proceed under this section and receive an arbitrary amount. *Spieth v. Stuart*, 130 M 216, 299 P 2d 106, 108, overruling anything in conflict therewith found in *Novak v. Industrial Accident Board*, 73 M 196, 235 P 756.

### Operation and Effect

Where there was proof of a limitation of muscular movement to the extent of forty or fifty per cent, but no proof of the inability to obtain employment or how or in what manner the claimant's ability to earn had been in anywise reduced because of the injuries, the trial court was correct in denying the claimant compensation since the loss of earning power as the result of an injury is not necessarily proportional to the bodily functional disability. *Shaffer v. Midland Empire Packing Co.*, 127 M 211, 259 P 2d 340, 342.

The test is not whether there has been a loss of earnings or income caused by the injury, but rather has there been a loss of earning capacity—a loss of ability to earn in the open labor market. *Shaffer v. Midland Empire Packing Co.*, 127 M 211, 259 P 2d 340, 342.

**92-709A. Permanent and total disability created by a second injury—second injury fund.** (1) If an employee who has previously lost, or lost the use of, one [1] hand, one [1] arm, one [1] foot, one [1] leg, or one [1] eye, from any cause or origin and irrespective of compensability becomes permanently and totally disabled through the loss, or loss of use, of another such member or organ, the employer, insurance carrier, or industrial accident fund, as the case may be, shall be liable only for the compensation payable for such second loss; provided, that in addition to such compensation and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total disability, out of a special fund known as the "Second-Injury Fund," and created for such purpose in the following manner:

In every case of the death of an employee under this act, where there is no person entitled to compensation, the employer if under Plan I, or his insurance carrier if under Plan II, or the industrial accident fund if under Plan III, shall pay to the second injury fund of the industrial accident board the sum of five hundred and no/100 (\$500.00) dollars to be deposited for the benefit of said fund, and the board shall direct the distribution thereof.

When in the judgment of the industrial accident board, the amount of money in the second injury fund is such that there is a surplus above and beyond known liabilities, the board may in its discretion suspend or decrease further collection of assessments for a period of time to be determined by the board but in no event to exceed one [1] calendar year.

(2) There is hereby appropriated from moneys in the industrial accident fund the sum of twenty thousand and no/100 (\$20,000.00) dollars to immediately create said second injury fund and to pay the compensation provided for in this act. When in the judgment of the industrial accident board, the contributions to the second injury fund so warrant, the board shall direct the reimbursement of the industrial accident fund out of said second injury fund. In addition to the reimbursement hereinabove directed to be made, the board shall cause to be paid to the industrial accident fund from said second injury fund, when contributions thereto so warrant, interest at the rate of 3% per annum upon said sum of twenty thousand dollars (\$20,000.00) hereinabove appropriated or upon such portion thereof as may from time to time remain in said second injury fund.

**History:** Sec. 92-709A, R. C. M. 1947, as added Sec. 1, Ch. 190, L. 1951.

#### **Title of Act**

An act to amend that portion of the Workmen's Compensation Act contained in chapter 7 of Volume 6 of the Revised Codes of Montana of 1947 by adding thereto a new section to be known as section 92-709A; encouraging the employment of disabled veterans and other disabled persons; providing for payment of workmen's compensation for a second injury; creating a second injury fund in the industrial accident board through payments from employers, insurers, and the

industrial accident fund; appropriating twenty thousand and no/100 (\$20,000.00) dollars from the industrial accident fund for the purposes of this act and providing for the repayment thereof.

#### **Effective Date**

Section 2 of Ch. 190, L. 1951 provided the act should be in force from and after its passage and approval. Approved March 5, 1951.

Pleading aggravation of a preexisting physical condition in workmen's compensation cases. 32 ALR 2d 1459.

**92-710. (2921) Repealed.****Repeal**

This section (Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 177, L. 1929; amd. Sec. 8,

Ch. 235, L. 1947), relating to hernia cases, was repealed by Sec. 1, Ch. 197, Laws 1959.

**92-712. (2923) Adjustment of compensation in case of further injuries.****Construction**

The fact that a man has once received compensation, as for example where he has previously received 250 weeks or half the statutory amount does not mean that forever after he is in the eyes of the compensation laws but half a man, so that he can never again receive a compensation award going beyond the other fifty per cent of total. After having received his prior payments, he may, in future years, be physically able to and does resume full gainful employment for several years, and if he does, there is no reason or logic why a disability from an unscheduled industrial accidental injury, which would bring anyone else total permanent disability benefits, should yield him only half as much. *Peitz v. Industrial Accident Board*, 127 M 316, 264 P 2d 709, 712.

The limitation affixed to unscheduled injuries applies only to the particular injury which results from a particular

accident. Any other interpretation would be discriminatory as between a person having a prior industrial accidental injury and another person who had the same kind of an injury outside of industry; when both thereafter had an unscheduled industrial accidental injury, the former would have his prior payments deducted while the latter would receive full payment. *Peitz v. Industrial Accident Board*, 127 M 316, 264 P 2d 709, 712.

Worker, who suffered a prior industrial accident several years before to a different segment of his body and drew compensation for several months for that injury but at the time of his present injury he was not receiving compensation for the prior injury nor were the prior payments commuted or paid in a lump sum, would not have that compensation deducted from the claim under the present injury. *Peitz v. Industrial Accident Board*, 127 M 316, 264 P 2d 709.

**92-715. (2926) Monthly payments converted into a lump sum.** The monthly payments provided for in this act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of two per centum (2%) per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary, or major or minor dependents, as the case may be, and shall rest in the discretion of the board, both as to the amount of such lump sum payment and the advisability of such conversion. The board is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act; and all settlements and compromises of compensation provided in this act shall be absolutely null and void without the approval of the board. Any approval of the board must be in writing and set forth specifically the reasons for such lump sum or compromise payment.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R. C. M. 1921; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957.

**Amendments**

The 1951 amendment reduced the rate of capitalization provided for in the first sentence from 5% to 2%.

The 1957 amendment added the last sentence.

**Repealing Clause**

Section 2 of Ch. 225, L. 1951 repealed

all acts or parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 225, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 5, 1951.

**Operation and Effect**

Where the evidence before the district court was ample to sustain that court's judgment that the claimant should be awarded total disability rating and that a lump sum award and payment be made



to him, such judgment will be affirmed. *Kustudia v. Industrial Accident Board*, 127 M 115, 258 P 2d 965, 970.

The legislature evidently intended in the enactment of the Workmen's Compensation Act that the monthly payments should be the rule and lump sum settlements the exception. The various purposes of the method of periodical payments, is as far

as possible, to preclude the possibility of an improvident claimant or dependent wasting the means of support and thereby becoming a burden upon the public; and also that the result of the industrial accident may be better appraised during the periodic payments. *Moffett v. Industrial Accident Board*, 130 M 303, 301 P 2d 340.

## CHAPTER 8—MISCELLANEOUS REGULATIONS—POWERS OF BOARD—REHEARINGS AND APPEALS

Section 92-807. Notice of claims for injuries other than death.

92-814.1. Requiring claimant to submit to examination—report of physician—cost.

92-819. Apportionment of costs and disbursements—expenses.

92-823. Time for filing—final findings and awards.

92-827. Record of proceedings to be kept and testimony to be taken down—attorney's fees.

**92-807. (2933) Notice of claims for injuries other than death.** No claims to recover compensation under this act for injuries not resulting in death shall be maintained unless, within sixty (60) days after the occurrence of the accident which is claimed to have caused the injury, notice in writing stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer, except as otherwise provided in section 92-602; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury shall be equivalent to such service.

**History:** En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R. C. M. 1921; amd. Sec. 7, Ch. 177, L. 1929; amd. Sec. 9, Ch. 234, L. 1957.

### Amendment

The 1957 amendment substituted "sixty (60) days" for "thirty (30) days."

**92-808. (2934) Employers and insurers required to file reports, etc.**

### Operation and Effect

Where the industrial accident board had received a notice of injury from the employer, and a letter from the employee asking what he should do and the board advised the employee that he could get medical treatment, the board recognized that the employee suffered a compensable accident and there was a duty to notify

the employee that he was required to file a claim under oath. *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 869.

### References

Cited or applied in *Levo v. General-Shea Morrison*, 128 M 570, 280 P 2d 1086, 1088.

**92-814.1. Requiring claimant to submit to examination — report of physician—cost.** In the event of a dispute concerning the physical condition of a claimant, or the cause or causes of his injury or disability, if any, the board, at the request of the claimant, employer or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or physicians within the state of Montana or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by

the dispute. The physician making such examination shall file a written report of his findings with the board for its use in the determination of the controversy involved. The board shall pay the physician for such examination and shall be reimbursed by the party who requested it.

**History:** En. Sec. 10, Ch. 234, L. 1957.

**Effective Date**

**Repealing Clause**

Section 11 of Ch. 234, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Section 12 of Ch. 234, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

**92-819. (2945) Apportionment of costs and disbursements—expenses.** The costs and disbursements incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board.

**History:** En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2945, R. C. M. 1921; amd. Sec. 3, Ch. 139, L. 1931; amd. Sec. 2, Ch. 162, L. 1937; amd. Sec. 1, Ch. 184, L. 1947; amd. Sec. 2, Ch. 176, L. 1957.

**Amendment**

The 1957 amendment deleted from this section a second sentence, for text of which see parent volume.

**92-821. (2947) Jurisdiction of board to hear disputes and controversies.**

**Attack on Decision—Burden of Proof**

Where the decisions of the board and court involve the consideration of conflicting evidence as to essential facts or the deduction of permissible but diverse inferences therefrom, their solutions of

such conflict are presumed to be correct, and the burden of proof is upon the party attacking them to show that they were erroneous. *Partoll v. Anaconda Copper Min. Co.*, 122 M 305, 203 P 2d 974, 977.

**92-823. (2949) Time for filing—final findings and awards.** The board shall hold the initial hearing to determine any dispute or controversy arising under this act within ninety (90) days from the date on which such disputed claim was filed with the board. After a final hearing by the board, it shall within thirty (30) days, make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the right of the parties.

**History:** En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2949, R. C. M. 1921; amd. Sec. 8, Ch. 38, L. 1953.

**Repealing Clause**

Section 9 of Ch. 38, Laws 1953 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1953 amendment added the first sentence of this section and inserted the number (30).

**92-826. (2952) Jurisdiction to rescind or amend any order, etc.**

**Lump Sum Settlement**

Where employee, in 1938, entered into a full and final compromise settlement calling for a lump sum payment and which

was approved by the board, such order of the board could not be reopened in later years. *Moffett v. Industrial Accident Board*, 130 M 303, 301 P 2d 340.

**92-827. (2953) Record of proceedings to be kept and testimony to be taken down—attorney's fees.** A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic re-

porter appointed by the board, and the parties shall be entitled to be heard in person or by attorney.

Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its discretion or upon the application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by claimant or plaintiff.

In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board. Provided further, that the board must furnish a copy of such testimony, written exhibits, pleadings, records and proceedings to the claimant without costs.

**History:** En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2953, R. C. M. 1921; amd. Sec. 4, Ch. 139, L. 1931; amd. Sec. 3, Ch. 162, L. 1937; amd. Sec. 1, Ch. 170, L. 1959.

#### Amendment

The 1959 amendment added at the end of the section the proviso providing for a copy of the record for the claimant.

### 92-829. (2955) Application for rehearing.

#### References

Cited or applied in State ex rel. Albrecht v. District Court, 126 M 178, 246

P 2d 1035, 1036; Spieth v. Stuart, 130 M 216, 299 P 2d 106, 110.

### 92-831. (2957) Application for rehearing—contents—rules of procedure.

#### References

Cited or applied in Spieth v. Stuart, 130 M 216, 299 P 2d 106, 110.

### 92-833. (2959) Appeal to district court.

#### Appeal Time Provisions Mandatory and Jurisdictional

The appeal time provisions of this section are mandatory and jurisdictional; thus, where an application for a rehearing was denied, and appeal to the district court was not made until 36 days after the application for rehearing was denied and 28 days after notice of such order and decision of the board was received, the district court was without jurisdiction to entertain the appeal. State ex rel. Albrecht v. District Court, 126 M 178, 246 P 2d 1035, 1036, 1037.

#### Appeal to Supreme Court

Where the evidence before the district court was ample to sustain that court's judgment, such judgment will be affirmed. Although full credit and effect are given to the findings made by the board the

court will uphold the judgment of the district court, if the conclusions of law reached by the board are not correct. Kustudia v. Industrial Accident Board, 127 M 115, 258 P 2d 965, 970.

#### Operation and Effect

Where claimant appealed from the decision of the industrial accident board and then dismissed such appeal without prejudice in order to present a motion for a rehearing as contemplated by this section, there was no waiver of his right of appeal. Spieth v. Stuart, 130 M 216, 299 P 2d 106, 110.

#### Presumptions

Every presumption is in favor of the correctness of the decision of the industrial board. Birnie v. United States Gypsum Co., — M —, 328 P 2d 133, 136.

### 92-834. (2960) How appeal taken—notice—record—trial.

#### References

Cited or applied in State ex rel. Albrecht v. District Court, 126 M 178, 246

P 2d 1035, 1036; Kustudia v. Industrial Accident Board, 127 M 115, 258 P 2d 965, 969.



**92-835. (2961) Appearances—setting aside conclusions, orders, etc.****References**Cited or applied in *Kustudia v. Indus-*

trial Accident Board, 127 M 115, 258 P 2d 965, 970.

**92-836. (2962) Appeals to supreme court.****Extent of Review**

On appeal to the Supreme Court where the evidence is conflicting the resolution of such conflicts is for the trier of the facts and where there is evidence to sustain its determination it will not be disturbed on appeal. *Weakley v. Cook*, 126 M 332, 249 P 2d 926.

**Presumptions**

Every presumption is in favor of the industrial board and that of the district court. *Birnie v. United States Gypsum Co.*, — M —, 328 P 2d 133, 136.

**92-838. (2964) Court to give liberal construction to act.****Accidents Occurring Outside of State**

Employees who are resident citizens of the state, employed and paid in Montana through the only office of their employer, a Montana corporation, are entitled to the benefits of the Workmen's Compensation Laws of Montana although they were injured in another state. *State v. Industrial Accident Board*, 130 M 272, 300 P 2d 954. (Dissenting opinion, 130 M 272, 300 P 2d 954, 963.)

**Liberally Construed in Favor of Claimant**

The act must be construed liberally in favor of the claimant. *Murphy v. Anaconda Company*, 133 M 198, 321 P 2d 1094, 1097.

**Operation and Effect**

The court cannot under the guise of liberal interpretation, disregard plain provisions of the statute, but when it is open to more than one interpretation, one favorable to the employee and the other against him, the court must give it the construction most favorable to the injured workman. *Geary v. Anaconda Copper Min. Co.*, 120 M 485, 188 P 2d 185, 186.

The industrial accident board's first duty is to administer the act so as to give the employee the greatest possible protection within the purposes of the act. *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 871.

An injury is accidental where either the cause or the result is unexpected or accidental even though the work being done is

usual or ordinary as long as the exertion is either the sole or a contributory cause of the injury. *Murphy v. Anaconda Company*, 133 M 198, 321 P 2d 1094, 1101.

Where employee was a union job steward and was injured in an auto accident, after working hours, while driving to a union meeting which was not concerned with an impending strike or grievance, the employee was not within the scope of his employment at the time of the accident. *Morgan v. Industrial Accident Board*, 133 M 254, 321 P 2d 232.

In determining whether or not an employee was acting within the scope of his employment a fundamental rule is that in cases where some reasonably immediate service to the employer can be discerned the claim has been sustained, but where no immediate service is found the claim is denied. *Morgan v. Industrial Accident Board*, 133 M 254, 321 P 2d 232, 236.

Where claimant petitioned for the granting of further compensation, which was denied, and the court admitted her testimony as to her physical condition subsequent to the hearing before the board, claimant was entitled to have admitted a doctor's deposition which had been taken while the appeal from the board's ruling was pending. *Zachariasen v. Meeks*, 133 M 278, 322 P 2d 1115.

**References**

Cited in *Peitz v. Industrial Accident Board*, 127 M 316, 264 P 2d 709, 712; *Spieth v. Stuart*, 130 M 216, 299 P 2d 106, 107.

## CHAPTER 9—COMPENSATION PLAN NO. 1

Section 92-902. Proof of solvency of employer electing plan No. 1 to be filed.

**92-902. (2971) Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compen-

sation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

The board shall levy an assessment in the amount of not to exceed two hundredths of one per cent of the annual payroll of such employer in Montana, for the preceding fiscal year, which assessment shall be paid to the board by said employer at the time of filing of proof of solvency.

No assessment shall be in an amount less than ten dollars (\$10.00).

If such employer had no payroll in Montana for the entire preceding fiscal year, the assessment shall be based on the estimated payroll for the year in which election is made.

The treasurer of the board shall pay the amounts so collected into the industrial administration fund.

**History:** En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R. C. M. 1921; amd. Sec. 5, Ch. 139, L. 1931; amd. Sec. 3, Ch. 176, L. 1957.

#### Amendment

The 1957 amendment inserted the word "in" before the words "such form" in the

first paragraph and substituted the second, third, fourth and fifth paragraphs for a former last sentence of the first paragraph which read "The industrial accident board shall require a fee of five dollars (\$5.00) to be paid into the industrial fund for the filing of every such proof of solvency."

### CHAPTER 10—COMPENSATION PLAN NO. 2

Section 92-1003. Policies to contain what.

92-1005. Policies made subject to this act—assessment of insurers.

#### 92-1001. (2978) Employer electing plan No. 2 to insure his liability.

##### References

Cited or applied in *Shaffer v. Midland Empire Packing Co.*, 127 M 211, 259 P 2d 340, 341.

Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 ALR 2d 407.

**92-1003. (2980) Policies to contain what.** All policies insuring the payment of compensation under this act, must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

**History:** En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R. C. M. 1921; amd. Sec. 6, Ch. 139, L. 1931; amd. Sec. 4, Ch. 176, L. 1957.

#### Amendment

The 1957 amendment deleted from the

end of this section a sentence which read "When any such policy, or a renewal thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars (\$3.00), which fee is to be credited to the industrial administrative fund."

**92-1005. (2982) Policies made subject to this act—assessment of insurers.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its forms shall have been approved by the board, and as otherwise provided by law.

On or before the first day of July of each year, the board shall assess and each insurer shall pay to the board not to exceed three and one-fourths per cent (3¼%) of its gross annual direct premiums collected in Montana on policies of insurance insuring employers who elected to become bound by the compensation plan No. 2 during the previous calendar year, less return premiums. No such assessment shall be less than ten dollars (\$10.00). The treasurer of the board shall pay the amounts so collected into the industrial administration fund. Payments by such insurers under this section shall be considered as items of loss for rate-making purposes.

**History:** En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R. C. M. 1921; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959.

#### Amendments

The 1951 amendment added the second paragraph.

The 1957 amendment substituted the second paragraph above for the one added by the 1951 amendment which read "No insurer shall enter into any such policy of insurance unless said insurer agrees to devote one percentum (1%) of its gross annual premiums collected in Montana on policies of workmen's compensation insurance to accident prevention work among its assureds. Such accident prevention work shall be carried on in cooperation with the bureau of safety of the industrial accident board."

The 1959 amendment increased the assessment rate set forth in the first sentence of the second paragraph from 1¼% to 3¼%.

#### Repealing Clauses

Section 6 of Ch. 176, Laws 1957 read "That section 92-1211 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 7 of Ch. 176, Laws 1957 read "That section 92-1212 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 8 of Ch. 176, Laws 1957 read "That section 92-1213 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 2 of Ch. 217, Laws 1951; Sec. 9 of Ch. 176, Laws 1957 and Sec. 2 of Ch. 203, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 11—COMPENSATION PLAN NO. 3

Section 92-1101. What necessary in electing plan No. 3—percentage of payroll to be paid in under plan.

92-1103. Contract or policy of insurance—payment of premium.

92-1104. Classifications by board.

92-1105. Intent and purpose of plan No. 3.

92-1110. Surplus in industrial insurance fund.

92-1112. Investment of reserve—payment of installments.

92-1114. Collection in case of default by employer—cancellation of right to operate under plan No. 3 for failure to pay premium.

**92-1101. (2990) What necessary in electing plan No. 3—percentage of payroll to be paid in under plan.**

### COMPENSATION PLAN NUMBER THREE

Every employer subject to the provisions of compensation plan No. 3 shall, in the manner herein specified pay into the industrial insurance fund a premium based on a percentage of his payroll as determined by the industrial accident board in accordance with the provisions of this act.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1957.

this section. For section prior to amendment see parent volume.

#### Amendment

The 1957 amendment completely rewrote

#### References

Cited or applied in Taber v. Industrial Acc. Fund, 126 M 240, 247 P 2d 472;



Kustudia v. Industrial Accident Board, 127 M 115, 258 P 2d 965, 966; State v. Industrial Accident Board, 130 M 272, 300 P 2d 954, 958; Jeffries Coal Co. v. Mon-

tana State Industrial Accident Board, 131 M 511, 312 P 2d 128, 130; Greenfield v. Industrial Accident Board, 133 M 136, 320 P 2d 1000, 1001.

**92-1103. (2991) Contract or policy of insurance—payment of premium.**

Every employer electing to be bound by compensation plan No. 3 shall receive from the industrial accident board a contract or policy of insurance in a form approved by the board. The premium thereon shall be paid by the employer, to the industrial accident board at such times as the board shall prescribe and shall be paid over by the board to the state treasurer to the credit of the industrial insurance fund.

**History:** En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R. C. M. 1921; amd. Sec. 2, Ch. 123, L. 1957.

**Amendment**

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

**92-1104. (2992) Classifications by board.** The industrial accident board is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making such change.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R. C. M. 1921; amd. Sec. 3, Ch. 123, L. 1957.

**Amendment**

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

**92-1105. (2993) Intent and purpose of plan No. 3.** It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation or employment coming under the provisions of said plan shall be liable to pay for injuries happening to employees coming under the provisions of the workmen's compensation act.

The industrial accident fund shall hereafter be known as the industrial insurance fund. Such fund shall consist of all premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money belonging to the fund.

The industrial insurance fund shall be neither more nor less than self supporting. Employments affected by the provisions hereof shall be divided by the board for the purpose of the fund into classes, whose rates may be readjusted at such times as the board may determine.

Separate accounts shall be kept of the amounts collected and expended in each class for determining rates but for payment of compensation and dividends the fund shall be one and indivisible. The board shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of a solvent industrial insurance fund, and the creation of surplus and reserves and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk.

The board in fixing rates shall provide for the expenses of administering the fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an adequate catastrophe reserve, re-

serves adequate to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the board.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R. C. M. 1921; amd. Sec. 4, Ch. 123, L. 1957.

#### Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

#### Repealing Clause

Section 5 of Ch. 123, Laws 1957 read "That section 92-1109 and 92-1111 of the Revised Codes of Montana of 1947 be repealed."

#### References

Cited or applied in *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 871.

### 92-1109. (2997) Repealed.

#### Repeal

This section (Sec. 40, Ch. 96, L. 1915), relating to changes in classification of

risks to be equalized, was repealed by Sec. 5, Ch. 123, Laws 1957.

**92-1110. (2998) Surplus in industrial insurance fund.** If at the end of any fiscal year, there exists in the industrial insurance fund an excess of assets over liabilities, and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the board may declare a dividend in such manner as the rules of the board may prescribe, to those employers who have paid premiums into the industrial insurance fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of such balance to which employer is entitled as dividends, the board shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R. C. M. 1921; amd. Sec. 6, Ch. 123, L. 1957.

#### Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

### 92-1111. (2999) Repealed.

#### Repeal

This section (Sec. 40, Ch. 96, L. 1915), relating to amount to be set apart when

required payment reasonably certain, was repealed by Sec. 5, Ch. 123, Laws 1957.

**92-1112. (3000) Investment of reserve—payment of installments.** The treasurer of the board shall turn over such reserve to the state board of land commissioners to be invested and the same shall be invested by said state board of land commissioners as part of the long term investment fund and out of the same and its earnings shall be paid the monthly installments, and any lump sum, then or thereafter arranged for; provided, however, that when there is sufficient money in the industrial accident fund to meet such compensation payments, any surplus remaining may be placed in the industrial reserve fund and invested as specified in this section.

**History:** En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 921; re-en. Sec. 3000, R. C. M. 1921; amd. Sec. 17, Ch. 176, L. 1953.

75-2708, 79-303, 79-304, 79-305, 79-1201, 79-1202, 79-1203, 79-1206, 79-1208, 79-1209, 79-1211, 79-1213, 79-1214 and 79-1216 respectively.

#### Compiler's Note

Sections 1 to 16 of Ch. 176, Laws 1953 are compiled as sections 31-205, 68-701,

#### Amendment

The 1953 amendment substituted "turn over such reserve to the state board of

land commissioners to be invested and the same shall be invested by said state board of land commissioners as part of the long term investment fund" for "invest such reserve in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana, or any other se-

curity which may be approved by said board," and "as" for "by the board in the securities" near the end of the section.

#### Repealing Clause

Section 18 of Ch. 176, Laws 1953 repealed all acts and parts of acts in conflict therewith.

**92-1114. (3002) Collection in case of default by employer—cancellation of right to operate under plan No. 3 for failure to pay premium.** If any employer under plan No. 3 shall default in any payment to the industrial insurance fund, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The industrial accident board is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the workmen's compensation act for failure to pay the premiums due the industrial insurance fund; provided that when the industrial accident board makes an order cancelling an employer's right for failure to pay premiums to the industrial insurance fund it shall be the duty of the industrial accident board to make such order at least thirty (30) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties where the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices, to the effect that the industrial accident board has cancelled the right of the said employer to operate under the act; and said notice shall give the date of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the workmen's compensation act.

When an employer's right to operate has been cancelled by the board for failure to pay premiums and when the board, in its discretion finds that the property and assets of said employer are not sufficient to pay said premiums, the board may compromise said claim for premiums and accept a payment of an amount less than the total amount due.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957.

serted the words "under plan No. 3" near the beginning of the section and substituted "thirty (30) days" for "sixty (60) days."

#### Amendment

The 1957 amendment substituted "industrial insurance fund" for "industrial accident fund" each time it appears; in-

#### Repealing Clause

Section 8 of Ch. 123, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**92-1118. (3006) Application for compensation under plan No. 3.**

#### 1945 Amendment Unconstitutional

Chapter 213 of Laws 1945 is unconstitutional since the legislature failed to follow the constitutional mandate of having the

bill printed for use of the members and that fact shows affirmatively on the journals. O'Bannon v. Gustafson, 130 M 402, 303 P 2d 938.

## CHAPTER 12—SAFETY PROVISIONS

**92-1211 to 92-1213. (3022 to 3024) Repealed.**

#### Repeal

These sections (Sec. 52, Ch. 96, L. 1915), relating to inspection fees and fines, were

repealed by Secs. 6 to 8 respectively, Ch. 176, Laws 1957.



# WORKMEN'S COMPENSATION ACT

## CHAPTER 13—OCCUPATIONAL DISEASE ACT

- Section 92-1301. Short title.
- 92-1302. Administration of act.
- 92-1303. Definitions.
- 92-1304. Occupational disease.
- 92-1305. Proximate causation.
- 92-1306. Regular employees and subcontractors.
- 92-1307. Who subject to act.
- 92-1308. Right to compensation exclusive remedy.
- 92-1309. Notice of employees' right to reject occupational disease compensation act.
- 92-1310. Liability of last employer, exception.
- 92-1311. Payment of compensation—exceptions and limitations.
- 92-1312. Claims must be presented within what time.
- 92-1313. Notice of disability or death.
- 92-1314. Medical panel, medical committee, and pulmonary specialists.
- 92-1315. Procedure for medical examination.
- 92-1316. Where silicosis causes death.
- 92-1317. When occupational disease other than silicosis causes death.
- 92-1318. Autopsy.
- 92-1319. Periodic medical examinations.
- 92-1320. Payment of medical examination and autopsy expenses.
- 92-1321. Compensation benefits payable under this act.
- 92-1322. No compensation for partial disability.
- 92-1323. Prohibiting lump sum settlements.
- 92-1324. Burial expenses.
- 92-1325. Medical and hospital expenses.
- 92-1326. Aggravation.
- 92-1327. Silicosis with complications.
- 92-1328. Compensation precluded by wilful misconduct, wilful self-exposure or wilful disobedience of orders of board.
- 92-1329. Assignment of compensation—exemption from attachment or execution.
- 92-1330. Agreement by employee to waive compensation or to pay premium void—no liability in certain cases.
- 92-1331. Rights of suit at common law.
- 92-1332. Prohibiting supplementing of benefits.
- 92-1333. Diminution of compensation.
- 92-1334. Compensation plans.
- 92-1335. Hearing, findings and awards.
- 92-1336. Power of board to award compensation and time and manner of payment.
- 92-1337. Where payment due to child under eighteen years.
- 92-1338. Payment of compensation shall begin.
- 92-1339. Common law defenses not available.
- 92-1340. Penalties for violation.
- 92-1341. Deduction from wages of any part of a premium misdemeanor—hospital contributions.
- 92-1342. False representation by employee.
- 92-1343. Legal action by board.
- 92-1344. Board may sue and be sued.
- 92-1345. Board shall adopt rules and regulations.
- 92-1346. Claim forms prescribed by board.
- 92-1347. Power of board in certain matters.
- 92-1348. Confidential information used, how.
- 92-1349. American experience table of mortality used.
- 92-1350. Hearings and investigations—technical rules.
- 92-1351. Depositions may be taken.
- 92-1352. Powers of board.
- 92-1353. Powers to issue writs and process—fees for serving.
- 92-1354. Power to administer oaths, certify official acts, issue subpoenas—witness fees and mileage.
- 92-1355. Power of district court concerning production of testimony—contempt.
- 92-1356. Certificates and certified copies as evidence.
- 92-1357. Apportionment of costs and disbursements—expenses.
- 92-1358. Books, records and payrolls to be open to inspection.

- 92-1359. Jurisdiction of board to hear disputes and controversies.
- 92-1360. Presumption as to legality of rules, orders, findings, etc., of board.
- 92-1361. Collateral attack not permitted.
- 92-1362. Appeal to district court.
- 92-1363. Procedure upon appeal.
- 92-1364. Appearance on appeal.
- 92-1365. Appeal to supreme court.
- 92-1366. Employer liability.
- 92-1367. No vested right to compensation.
- 92-1368. This act to be liberally construed.

**92-1301. Short title.** This act shall be known as "The Occupational Disease Act of Montana."

**History:** En. Sec. 1, Ch. 155, L. 1959.

#### **Title of Act**

An act providing for compensation of workmen for disability or death resulting from occupational diseases; providing that this act shall be known as "The Occupational Disease Act of Montana"; providing that this act shall be administered by the industrial accident board; providing for definitions; defining occupational diseases; determining proximate causation; providing for the coverage of certain employers and employees; establishing those subject to this act; providing for the liability of last employer and exceptions; providing that right to recover compensation pursuant to provisions of this act shall be the exclusive remedy therefor against the employer bound by this act; providing for employees' right to reject this act; providing for payment of compensation, exceptions and limitations; providing for time and manner for filing claims; providing for notice of disability or death; providing for medical plan, medical committee and pulmonary specialists; establishing procedure for medical examination of claimant; providing for autopsy; providing that compensation payments for disability or death caused by an occupational disease shall be the same as compensation payments for temporary total and permanent total disability and for injuries causing death under the Montana workmen's compensation act; providing for burial expense; providing for medical and hospital expense; defining aggravation and prorating benefits thereunder; providing for compensation for disability or death from silicosis complicated by pulmonary diseases; providing for periodic medical examinations; providing for compensation plans and for the creation of the occupational disease compensation fund; establishing when common law defenses are not available; providing for the payment of benefits in the event employee

is discharged under certain conditions; establishing penalty for false representation by employer; prohibiting lump-sum settlements and providing for payment of attorney fees; providing for limitation of employee liability in certain cases and prohibiting waivers; providing a date when compensation payments under this act begin; providing penalties for violation of this act; providing for time and manner of payments; providing for payment to guardian of child under eighteen (18) years of age; providing for procedure to be followed by the board; providing for right of appeal to courts; providing certain administrative powers of board; providing for records, and copies of evidence; providing that books, records and payroll of employers shall be open to inspection by board; providing for jurisdiction of board to hear disputes and controversies; providing for hearings, findings, and awards by the board; prohibiting persons receiving compensation or benefits under part nine (9) of the public welfare act of the state of Montana from receiving benefits under this act; providing for the diminution of payments under this act where claimant, his beneficiaries, or his dependents are receiving benefits under the workmen's compensation act of Montana or any other state; providing that wilful misconduct, wilful self-exposure, or wilful disobedience of orders of the board shall bar right to benefits under this act; prohibiting assignment of compensation benefits or attachment of benefit payments; providing for payment of medical examination and autopsy expenses; prohibiting the vesting of rights to compensation awarded under this act and reserving unto the state the right to reduce the rate or amount of compensation to be received by any person; providing for a repealing clause; providing that this act shall be liberally construed; and repealing all acts and parts of acts in conflict herewith; providing an effective date.

**92-1302. Administration of act.** This act shall be administered by the industrial accident board of the state of Montana. The members of the industrial accident board shall receive no additional compensation for ad-

ministering this act. The actual and necessary traveling expenses of the members of the board while on business of administering this act shall be paid from the occupational disease compensation fund.

**History:** En. Sec. 2, Ch. 155, L. 1959.

**92-1303. Definitions.** Except as in this section and elsewhere in this act expressly set forth, the definitions contained in the workmen's compensation act shall apply to terms and words herein contained.

1. "Weekly wage" means the average of the weekly earnings of the employee in the employ of his employer against whom compensation is awarded during the period of one year prior to the termination of his employment with such employer, or during such lesser period in such year as he has been in the employ of his employer. In case the employee is absent from employment during the period as a result of the occupational disease for which compensation is claimed, then the week or weeks in which the absence occurs shall not be included in the computation of the average weekly wage. If the period provided in this section for computation of the average weekly wage does not include four weeks, then the average weekly wage shall be such as, having regard to the previous wage of the employee, or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the weekly earning capacity of the disabled employee in the employment in which he is working at the time of his disablement.

2. "Award" means the finding or decision of the board as to the amount of compensation due any disabled employee or the dependents of any deceased employee.

3. "Board" means the industrial accident board of the state of Montana.

4. "Compensation" means the payments and benefits provided in this act.

5. "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from performing any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability."

6. The terms "employee," "workman," and "operative," as used herein, shall mean:

Every person in the service of the state, and of a county, city, town, municipal corporation, or school district, including the regular members of lawfully constituted police and fire departments of cities and towns.

Every person in the service of any employer subject to this act as hereinafter defined or to whom such employer is required to secure compensation under this act, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and is not in the usual course of trade, business, or occupation of the employer, and not including agricultural workers and domestic servants unless the employer shall so elect.



7. "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years, or if no surviving wife or husband then a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of disablement.

8. "Major dependent" means if there be no beneficiary as defined in a preceding section, the father or mother, or the survivor of them, if actually dependent upon the decedent at the time of his disablement, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

9. "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding sections the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of his disablement. Minor dependents shall be awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

10. "Invalid" means one who is physically or mentally incapacitated.

11. "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the disablement, an illegitimate child legitimized prior to the disablement.

12. "Week" means six (6) working days, but includes Sundays.

13. "Wages" means the average daily wages received by the employee at the time of the disablement for the usual hours of employment in a day, and overtime is not to be considered.

14. "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the disablement.

15. "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her disablement.

16. "Commissioner" means one (1) of the members of the industrial accident board.

17. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.

18. "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified.

19. "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve (12) times the average monthly payroll for the current year; provided, that an estimate may be

made by the board for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

20. "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth (30th) day of the succeeding June.

21. "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

22. "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

23. The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession in this state.

24. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

25. Wherever the masculine gender is used, the feminine and neuter shall be included.

26. For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide ( $\text{SiO}_2$ ) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic x-ray pattern, and by variable clinical manifestations.

27. "Workshift" means the work for which an employee is paid a day's wages.

28. "Workmen's Compensation Act" means the workmen's compensation act of the state of Montana.

**History:** En. Sec. 3, Ch. 155, L. 1959.

**92-1304. Occupational disease.** The following diseases only shall be termed occupational diseases.

1. Silicosis.
2. Poisoning by
  - (a) Arsenic or its compounds.
  - (b) Antimony or its compounds.
  - (c) Cadmium or its compounds.
  - (d) Chrome or its compounds.
  - (e) Lead or its compounds.
  - (f) Manganese or its compounds.
  - (g) Mercury or its compounds.
  - (h) Phosphorous or its compounds.
  - (i) Selenium or its compounds.
  - (j) Vanadium or its compounds.
  - (k) Zinc or its compounds.
  - (l) Sulphur or its compounds.
  - (m) Copper or its compounds.
  - (n) Benzine or its derivatives.
  - (o) Benzol or its derivatives.
  - (p) Hydro-carbons.

- (q) Carbon derivatives.
- (r) Carbon tetrachloride.

- 3. Tamarack poisoning.
- 4. Anthrax caused by handling of wool, hair, bristles, hides or skins.
- 5. Poisoning or disease due to exposure to x-ray or radioactive substances.

6. Provided, however, that regardless of the specific listings, heretofore, any employer who so elects may insure against disablement by other diseases arising out of or contracted from and in the course of their employment if such insurance has been approved by the board.

**History:** En. Sec. 4, Ch. 155, L. 1959.

**92-1305. Proximate causation.** The occupational diseases defined by the preceding section shall be deemed to arise out of the employment only if:

1. There is a direct causal connection between the conditions under which the work is performed and the occupational disease.

2. The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.

3. The disease can be fairly traced to the employment as the proximate cause.

4. The disease does not come from a hazard to which workmen would have been equally exposed outside of the employment.

5. The disease is incidental to the character of the business and not independent of the relation of employer and employee.

**History:** En. Sec. 5, Ch. 155, L. 1959.

**92-1306. Regular employees and subcontractors.** The term "regularly employed," as herein used, includes all employments, whether continuous throughout the year or for only a portion of the year, in the usual trade, business, profession or occupation of an employer. Where an employer procures work to be done for him by a contractor over whose work he retains supervision or control, and such work is a part or process in the trade or business of the employer, then such contractor and the person employed by the subcontractor, are, within the meaning of this section, employees of the original employer. A person engaged in work for another, and who, while so engaged is independent of the employer in the execution of the work, not subject to the rule or control of the person for whom the work is done, but engaged only in the performance of a definite job or piece of work, and subordinate to the employer only in effecting a result in accordance with the employer's design, is an independent contractor and an employer within the meaning hereof.

**History:** En. Sec. 6, Ch. 155, L. 1959.

**92-1307. Who subject to act.** This act shall apply to, and only to, all employers and employees who now are or hereafter will be subject to the provisions of the workmen's compensation act of the state of Montana. The practice and procedure prescribed in such workmen's compensation act



shall apply to all proceedings under this occupational disease act, except as hereinafter otherwise provided.

**History:** En. Sec. 7, Ch. 155, L. 1959.

**92-1308. Right to compensation exclusive remedy.** The right to recover compensation pursuant to the provisions of this act for occupational diseases sustained by an employee and arising out of and in the course of his employment, whether resulting in death, or not, shall be the exclusive remedy therefor against the employer electing to be bound by and subject to this act, except as to such employees as shall reject this act as provided herein.

**History:** En. Sec. 8, Ch. 155, L. 1959.

**92-1309. Notice of employees' right to reject occupational disease compensation act.** Every employer subject to the provisions of this act shall post and keep posted in a conspicuous place upon his premises in languages, including English, as are from time to time designated by the board, a notice available for inspection by all his employees in substantially the following form:

"All employees are hereby notified that in the event they do not specifically reject the provisions of the occupational disease act of Montana, they are deemed by the laws of Montana to have accepted the provisions of such act and to have elected to accept compensation under the terms of said act, and that under the terms thereof employees have the right to reject the same by written notice thereof within ten days after entering the employ of this employer or after the first posting of this notice, whichever shall be the later; provided, however, it shall be unlawful for any such employer to require as a condition of employment the rejection of the provisions of this act, and any rejection which is the result of any such condition or requirement shall be void and of no effect."

**History:** En. Sec. 9, Ch. 155, L. 1959.

**92-1310. Liability of last employer, exception.** Where compensation is payable for an occupational disease the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease, but in the case of silicosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide ( $\text{SiO}_2$ ) dust for a period of ninety (90) actual workshifts or more after July 1, 1958.

**History:** En. Sec. 10, Ch. 155, L. 1959.

**92-1311. Payment of compensation—exceptions and limitations. A.** Compensation shall be paid to every employee who becomes disabled by reason of occupational disease arising out of his employment, subject to the following conditions; and when claims are presented and notices given in accordance with the limitations of sections 12 and 13 [92-1312 and 92-1313] of this act.

1. No compensation shall be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to the effective date of this act except as in section 11 [this section], paragraph "A", subparagraph 4 provided.

2. No compensation shall be paid for a disease other than silicosis unless total disability results within one hundred twenty (120) days from the last day upon which the employee actually worked for the employer against whom compensation is claimed; provided that the board upon good cause shown may waive this limitation in the interest of justice, but in any case said period may not be extended to more than one year from the date of last employment by the said employer.

3. No compensation shall be paid in case of silicosis unless during the eight years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than one thousand (1,000) work shifts in employment in this state and unless total disability results within four years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

4. Provided, however, that any silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this act shall be eligible to receive compensation under this act when totally disabled if he has seven hundred (700) actual work shifts since January 1, 1954 for that employer, provided, further, when any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment, which is not yet disabling, is discharged or transferred from the employment in which he is engaged, or when an employee ceases such employment and it is in fact, as determined by the medical panel, inadvisable for him on account of such nondisabling occupational disease, to continue in it, and suffers wage loss by reason of such discharge, transfer, or such cessation, the board may allow compensation on account thereof as it may deem just, not exceeding five thousand dollars (\$5,000.00).

5. No claim shall be maintained nor compensation paid unless the claim has been filed with the employer, the insurer, of the board, in writing under oath within the time fixed by section 12 [92-1312] of this act.

B. The compensation shall be paid to the beneficiary and dependents of every employee covered by this act in cases where death results from an occupational disease arising out of his employment subject to the following conditions:

1. No compensation shall be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases has occurred prior to the effective date of this act, except as in section 11 [this section], paragraph "A," subparagraph 4 of this act provided.

2. No compensation shall be paid for death from silicosis unless during the eight years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than one thousand (1,000) work shifts in employment in this state.

3. No compensation shall be paid for death from silicosis unless the death results within four (4) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on

file with the commission. In such cases compensation shall be paid if death results within seven (7) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

4. No compensation shall be paid for death from any occupational disease other than silicosis unless death results within one (1) year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease other than silicosis for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the board. In such cases compensation shall be paid if death results within three (3) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

5. No claim shall be maintained nor compensation paid unless the claim has been filed with the employer, the insurer or the board, as the case may be in writing within the time fixed by section 12 [92-1312] of this act.

C. Proof of the exposure to silicon dioxide dust for a period of not less than one thousand two hundred (1,200) work shifts in employment in this state, with proof of total disability from silicosis, shall be prima facie evidence of exposure to harmful quantities of such dust during all such period.

**History:** En. Sec. 11, Ch. 155, L. 1959.

**92-1312. Claims must be presented within what time.** The provisions of section 92-601, Revised Codes of Montana, 1947, as amended, shall not apply to claims filed under this act.

It is hereby provided in the case of disability resulting from occupational diseases as herein defined, including silicosis, that all claims therefor shall be forever barred unless the same shall be presented in writing under oath to the employer, the insurer or the board as the case may be within thirty (30) days after claimant has filed his notice of disability as provided in section 13 [92-1313] of this act. In the case of death from an occupational disease, as herein defined, including silicosis, all claims therefor shall be forever barred unless the same shall be presented in writing under oath to the employer, the insurer, or the board, as the case may be, within thirty (30) days of filing the notice of death as provided in section 13 [92-1313] of this act.

Claims shall be filed in triplicate on forms to be furnished by the board and may be accompanied by a medical report of the claimant's attending physician. The provisions of this section 12 [this section] as to the time for presenting claims for compensation shall prevail over any other provisions of this act to the contrary.

**History:** En. Sec. 12, Ch. 155, L. 1959.

**92-1313. Notice of disability or death.** The provisions of section 92-807, Revised Codes of Montana, 1947, as amended, shall not apply to cases of disability or death from occupational diseases as in this act defined.

Notice of disability or death in respect to which compensation is payable under this act, except disability or death resulting from silicosis, shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee, his beneficiaries, or his dependents



knew or should have known the nature of the impairment or cause of death and its relationship to the employment, but in no event shall notice be filed more than one year after the last day upon which the employee actually worked for the employer against whom compensation is claimed.

In cases of disability resulting from silicosis which are compensable under this act, notice of such disability shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee knew or should have known of the nature of the impairment and its relationship to employment, but in no event shall such notice be filed more than four (4) years after the last date upon which the employee actually worked for the employer against whom compensation is claimed.

In cases of a death from silicosis which is compensable under this act, notice of such death shall be given to the employer, the insurer, or the board, within thirty (30) days after the employee's beneficiaries or his dependents knew or should have known of the cause of death and its relationship to the employment, but in no event shall such notice be filed more than one (1) year after such death.

Such notice shall be valid only if filed in writing on forms to be furnished by the board, and shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the disability or death, and shall be signed by the employee or by some other person on his behalf; or in case of death by any person claiming to be entitled to compensation for such death or by some person on his behalf.

Except if death occurs during the period of total disability described in section 11, B.3. [92-1311], in which case the period of notice may be extended to the term of seven (7) years from the last day of said employment.

History: En. Sec. 13, Ch. 155, L. 1959.

**92-1314. Medical panel, medical committee, and pulmonary specialists.**

The Montana medical association may, at least annually, certify to the board as "medical committee nominees" thirty (30) or more licensed physicians of the state of Montana who are particularly qualified in the diagnosis, care and treatment of occupational diseases. In addition thereto, and simultaneously therewith the Montana medical association may certify to the board as "pulmonary specialists nominees" three (3) or more licensed physicians of the state who shall have had at the time of certification at least five (5) years' practice in the diagnosis, care and treatment of diseases of the pulmonary tract and the interpretation of x-ray films thereof. From said list of physicians certified as "medical committee nominees," the board shall appoint thirty (30) physicians who shall serve as and be hereinafter referred to as the "medical committee" and who shall examine claimants for occupational disease disabilities other than silicosis. From said list of physicians so certified as "pulmonary specialist nominees" the board shall appoint three (3) or more physicians who shall serve as and be hereinafter referred to as "pulmonary specialists."

In the event that the Montana medical association fails to make the certification as hereinabove provided, then, in that event, the board shall of its own choice appoint thirty (30) licensed physicians in the state of Montana who are particularly qualified in the diagnosis, care and treatment of occu-

pational diseases which said physicians shall serve as and be hereinafter referred to as the "medical committee" and shall appoint three (3) or more licensed physicians in the state of Montana who have had at the time of appointment at least five (5) years' practice in the diagnosis, care and treatment of diseases of the pulmonary tract and the interpretation of x-ray films thereof, which latter group of three (3) or more shall serve as and be hereinafter referred to as "pulmonary specialists." The "medical committee," together with the "pulmonary specialists," shall be known as and hereinafter referred to as the "medical panel."

**History:** En. Sec. 14, Ch. 155, L. 1959.

**92-1315. Procedure for medical examination.** A. In order to determine the validity of claims made pursuant to the provisions of this act, the following procedure and no other shall be followed in the course of the medical examination of the claimant for official report to said board, claimant, employer, or insurer, as the case may be.

1. Upon the filing of a claim by a claimant for occupational disease disability, other than silicosis, the board shall direct a member from said "medical committee" to examine and determine the disability of the claimant and submit a written report thereon to the board.

Upon the filing of a claim for compensation for silicosis disability under this act, the board shall direct an examination of and report to the board upon the claimant by said "pulmonary specialists," or one of them, including such x-ray and other pathological examinations and tests as in the opinion of such specialist or specialists may be necessary for the purpose of determining diagnosis, disablement, and the nature and type of medical treatment, hospitalization and other care required. If the claim is not controverted as to any medical fact, the examination and report of one of said specialists, shall be deemed the examination and report of all "pulmonary specialists." If the claim is controverted as to any medical fact, the report shall be made by all of said specialists after a physical examination by at least two (2) of them. The findings and opinions of a majority of the number of said specialists then appointed shall constitute the findings and opinions of all of them. The contents of the report of said "pulmonary specialists" when placed in the record shall constitute prima facie evidence of fact as to the matter therein contained. The "pulmonary specialists" or any one (1) of them making the report shall be subject to examination upon demand of any interested parties.

The "pulmonary specialists," or any one (1) of them in order to assist in reaching a conclusion may require the attending physician or director of a hospital or a sanitarium or other place in which treatment or care is being given, or has been given, to attend at a convenient time and place to consult with said specialists, or any one of them and to describe the nature and type of care and treatment and furnish any other evidence which said specialist or specialists desire.

Upon receiving the written report of such examining physician or physicians so appointed, the board shall forthwith determine whether or not the claimant shall receive the benefits pursuant to this act and it shall forward notice of its determination together with a true and correct copy

of said medical report to the claimant and the employer or insurer as the case may be.

2. If within twenty (20) days after receipt of such notice and medical report the claimant, employer or insurer, as the case may be, is dissatisfied with said determination by said board, they, or any of them, may demand a hearing before said board pursuant to the re-hearing provisions of section 92-829, Revised Codes of Montana, 1947. If, however, the board, claimant, employer or insurer, or any of them, is dissatisfied with the results of such first medical examination as indicated by said medical report, such dissatisfied party may upon thirty (30) days' notice in writing to all adversary parties and to the board require a re-examination by a member of said "medical panel"; provided, however, that if the benefits claimed are for a disability caused by silicosis the physician so selected by the dissatisfied party must be one of the "pulmonary specialists." Thereupon, after receipt of the report of medical re-examination, the board shall give like notice of its determination, whether said determination shall be the same as before or otherwise, together with a copy of said medical report, in the same manner as in the case of the first such examination and the party shall be entitled to a re-hearing in the same manner as in the case of such first medical examination. The evidence of the two (2) medical examinations above described shall be final, and, so far as the medical examination of the claimant is concerned, no evidence of other or additional medical examinations shall be admissible before the board upon re-hearing nor before any court upon the appeal, if any.

History: En. Sec. 15, Ch. 155, L. 1959.

**Compiler's Note**

This section as enacted contained no subsection "B."

**92-1316. Where silicosis causes death.** Where silicosis causes death and a claim for death benefits is filed, the "pulmonary specialists," or any one of them, if the medical evidence be not controverted, shall examine all available evidence pertaining to the claim and shall make findings and thereupon report to the board. The report shall constitute prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 16, Ch. 155, L. 1959.

**92-1317. When occupational disease other than silicosis causes death.** When an occupational disease, other than silicosis, causes death and a claim for death benefits is filed therefor, a member of the "medical committee" shall examine all available evidence pertaining to the claim and shall make findings and thereupon report to the board. The report shall constitute prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 17, Ch. 155, L. 1959.

**92-1318. Autopsy.** Upon the filing of a claim for compensation for death caused by occupational disease where an autopsy is necessary accordingly and scientifically to ascertain and determine the cause of death, such autopsy shall be ordered by the board; which autopsy shall be made under the supervision of the county coroner. The board may designate a duly licensed physician who is a specialist in such examinations to perform or attend such autopsies, and to certify his findings thereon. Such findings



shall be examined by a member of the medical panel, and shall be on file with the board where it shall be a public record.

**History:** En. Sec. 18, Ch. 155, L. 1959.

**92-1319. Periodic medical examinations.** A. The employee entitled to compensation shall submit himself for medical examination by a member of the "medical panel," from time to time at a place reasonably convenient for the workman when requested by the board, the insurer or the employer.

B. The request shall fix a time and place having regard to the convenience of the employee, his physical condition and ability to attend. The employee and any other party in interest may have a physician present at the examination if such physician is provided and paid for by the employee or other party.

C. If the employee refuses to submit to the examination or obstructs the examination, his right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period.

D. A physician who makes or is present at the examination may be required to testify as to the result thereof.

E. The board may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery, or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery.

**History:** En. Sec. 19, Ch. 155, L. 1959.

**92-1320. Payment of medical examination and autopsy expenses.** Expense of the first medical examination as provided in section 15 [92-1315] of this act shall be borne by the employer if compensation is claimed under plan one, by the insurer if the claim is under plan two, and by the board if the claim is under plan three. The expense of re-examination shall be borne by the dissatisfied party requesting such re-examination. The expense of the periodic medical examinations, as provided in section 19 [92-1319] of this act, shall be borne by the party requesting such periodic medical examination. The expense of the autopsy, as provided for in section 18 [92-1318] of this act, shall be borne by the party requesting such autopsy.

**History:** En. Sec. 20, Ch. 155, L. 1959.

**92-1321. Compensation benefits payable under this act.** The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease, or his beneficiaries and dependents in the case of death caused by an occupational disease, shall be entitled to under this act shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time, as is provided in cases of temporary total disability, permanent total disability and in cases of injuries causing death under the workmen's compensation act of the state of Montana.

**History:** En. Sec. 21, Ch. 155, L. 1959.

**92-1322. No compensation for partial disability.** No compensation as provided in section 21 [92-1321] of this act shall be payable to an employee who is partially disabled from an occupational disease.

**History:** En. Sec. 22, Ch. 155, L. 1959.

**92-1323. Prohibiting lump sum settlements.** No award made upon any claim pursuant to this act may be converted into a lump sum payment, in whole or in part, except in case the claimant, after having filed a claim with the employer, the board or the insurer, as the case may be, shall have entered into a contract of employment with an attorney for the recovery of such claim, the terms of which employment contract shall be deemed to be reasonable compensation by said board for such attorney's services, in which case, the amount of such attorney's compensation may be ordered by the board to be paid by the employer, insurer or the board as the case may be, and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant pursuant to this act, or said board may at its option require such payments to be deducted each week in such amount as it deems advisable from the payments thereafter to be made to the claimant pursuant to this act and paid to said attorney as they are so deducted from the weekly payments to the claimant.

**History:** En. Sec. 23, Ch. 155, L. 1959.

**92-1324. Burial expenses.** In addition to and separate and apart from any other compensation or benefit provided for in this act, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding five hundred dollars (\$500.00).

**History:** En. Sec. 24, Ch. 155, L. 1959.

**92-1325. Medical and hospital expenses.** In addition to the compensation provided by this act, the following shall be furnished:

If an employee becomes totally disabled from an occupational disease, he shall be entitled to receive medical services, hospitalization, medicines and such other treatment as may be approved by the board not exceeding in amount the sum of twenty-five hundred dollars (\$2,500.00), provided, however, that in such cases of total disability where apportionment of such sum does not meet such hospital expense, the board may allow an additional amount for such additional hospital and medical expenses as in special cases it may deem proper.

Any employee who suffers any of the occupational diseases listed in section 4 [92-1304], but who is able to continue in his employment while being treated therefor, shall be entitled to receive such medical services, treatments and medicines reasonably required, not exceeding the value of one thousand dollars (\$1,000.00).

The employer, or insurer, or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished or if the employee is under hospital contract as provided in section 92-610 (2907), Revised Codes of Montana, 1947, as amended.

When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of a dis-

abled employee in a particular case such disabled employee may, any time, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

**History:** En. Sec. 25, Ch. 155, L. 1959.

**92-1326. Aggravation.** Where an occupational disease is aggravated by any other disease or infirmity not itself compensable, or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable under this act shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death.

**History:** En. Sec. 26, Ch. 155, L. 1959.

**92-1327. Silicosis with complications.** In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this act, and other than pulmonary tuberculosis, compensation shall be reduced as provided in section 26 [92-1326].

**History:** En. Sec. 27, Ch. 155, L. 1959.

**92-1328. Compensation precluded by wilful misconduct, wilful self-exposure or wilful disobedience of orders of board.** Notwithstanding any other provision of this act, no employee, beneficiary, or dependent of an employee shall be entitled to receive compensation for disability from an occupational disease when such disability was caused by the wilful misconduct, wilful self-exposure, or wilful disobedience to such reasonable rules and regulations ordered by the board and which have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of the employee.

**History:** En. Sec. 28, Ch. 155, L. 1959.

**92-1329. Assignment of compensation—exemption from attachment or execution.** A. Compensation, whether determined or not, shall not, prior to the delivery of the warrant therefor, be assignable.

B. Compensation shall be exempt from attachment, garnishment and execution.

**History:** En. Sec. 29, Ch. 155, L. 1959.

**92-1330. Agreement by employee to waive compensation or to pay premium void—no liability in certain cases.** An agreement by an employee to waive his rights to compensation and except as otherwise provided in this act, an agreement by an employee to pay any portion of the premium paid by his employer, shall be void.

A. The employer may give, within two weeks of the application, physical examinations to the applicants for employment. Where an applicant



for employment whether such applicant has been formerly employed by the employer to whom application is made, or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinafter provided.

The report of the medical examination of the applicant for employment and x-rays, if any, shall be delivered to the board by the employer within five (5) days after such examination to such medical report and x-rays, if any, shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

The board shall submit such medical report and x-rays, if any, to a physician of its choice from the medical panel, and such physician shall report to the board his finding as to whether the medical report is satisfactory. The board shall within twenty (20) days after the receipt of such medical report from the employer enter its order approving or disapproving such report and specifying the particular disease or diseases found. Such order shall be in writing stating the reasons for such approval or disapproval. A copy of such order shall be mailed to the employer and a copy of such order shall be mailed to the applicant for employment within twenty-four (24) hours after the board has approved or disapproved such report.

An applicant for employment may commence work prior to the approval or disapproval of such report by the board, but if the board shall disapprove such report the employer may discharge such applicant for employment without liability to such applicant.

Provided, however, that if no physical examination is given to the applicant for employment within said two (2) week period then such applicant for employment shall be fully eligible to the benefits of this act.

B. Employers may give within one hundred eighty (180) days after becoming subject to this act physical examinations to any employees which said employer has in his employment. Where an employee, though not actually disabled is found upon competent medical and x-ray examination to be afflicted with an occupational disease or diseases, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinbefore provided in subsection A of this section 30 [this section].

Provided, however, that if no examination is given to the employee within said one hundred eighty (180) day period then such employee shall be fully eligible to the benefits of this act.

C. All such reports shall become permanent records of the board.

The board may make reasonable rules and regulations relative to the form, execution and filing of such reports not inconsistent with the provisions of this act.

History: En. Sec. 30, Ch. 155, L. 1959.

**92-1331. Rights of suit at common law.** There shall be no common law right of action for damage from occupational disease against an employer who elects to come under the provisions of this act, excepting for those employees not eligible for compensation under the terms of this act, or who reject coverage of this act.

**History:** En. Sec. 31, Ch. 155, L. 1959.

**92-1332. Prohibiting supplementing of benefits.** No person receiving compensation or benefits under the public welfare act of the state of Montana, as provided for by sections 71-1001 to 71-1008, inclusive, of the Revised Codes of Montana, 1947, as amended, shall be entitled to compensation or benefits under this act.

**History:** En. Sec. 32, Ch. 155, L. 1959.

**92-1333. Diminution of compensation.** Compensation payable pursuant to the terms of this act to the claimant, his beneficiaries or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the workmen's compensation act of Montana or any other workmen's compensation act.

**History:** En. Sec. 33, Ch. 155, L. 1959.

**92-1334. Compensation plans.** Employers shall secure compensation to their employees under one of the following plans:

#### COMPENSATION PLAN NUMBER ONE

1. When and how employer may elect to adopt—direct payment to employee. Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become, subject to and be bound by compensation plan No. 1, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

2. Proof of solvency of employer electing plan No. 1 to be filed. Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board. The industrial accident board shall require a fee of five dollars (\$5.00) to be paid into the industrial administration fund for the filing of every such proof of solvency.

3. Employer permitted to carry on business and settle directly with employee—renewal of application. If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to

his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation plan No. 1, shall, at least thirty (30) days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

4. Additional proof of solvency—revocation of order. The board may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten (10) or more than twenty (20) days, after and upon a full hearing, revoke any order or approval theretofore made.

5. Requiring security of employer. If said industrial accident board shall find that such employer has no financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find reasonable and necessary to meet all liabilities of such employer, which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board, and may be a certain estimated per centum of said employer's last preceding annual payroll, or a certain per centum of the established amount of his annual payroll for said fiscal year or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall, at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

6. Failure of employer to pay compensation—duty of board. Upon failure of said employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall



become due and payable, it shall be the duty of such industrial accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this act, and it shall be its duty, insofar as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds, or foreclose and liquidate said securities.

7. When employer to make deposit or security to guarantee payment of compensation. Within thirty (30) days after the happening of an accident where death or the nature of the disability renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability, in such sum as the board may direct; provided, however, that if sufficient securities are already on deposit with the said board, or if the said board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

8. When employer may be relieved from liability. Any employer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the board; or

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

#### COMPENSATION PLAN NUMBER TWO

1. Employer electing plan No. 2 to insure his liability. Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

2. Duty of employer electing plan No. 2—amount of insurance necessary. Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the board written acceptance of the provisions of compensation plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to

be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amount so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and necessary investigation, and the said employer shall furnish to such board all information which it may require.

3. Policies to contain what. All policies insuring the payment of compensation under this act, must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured. When any such policy, or the renewal thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars (\$3.00), which fee is to be credited to the industrial administrative fund.

4. Agreement to be contained in policies of insurance—deposit of bonds. No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the disablement or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, in an amount not less than twenty thousand dollars (\$20,000.00) or more than one hundred thousand dollars (\$100,000.00) as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability in the manner hereinafter provided; and thereafter said insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

5. Policies made subject to this act—form of insurance. Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board, as otherwise provided by law.

6. Renewals. Every renewal of such policy shall be made and delivered to said board at least thirty (30) days prior to the expiration of the expiring policy.

7. Deposits by insurer with board. Within thirty (30) days of the happening of an accident where death or the nature of the disablement renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the treasurer of the board for the protection and guarantee of the payment of such liability in such sum as the board may direct; provided, that if the board deems the amount on deposit by said insurer under the provisions of paragraph 4 of plan two, in section 34 [this section], sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

8. How insurer relieved from liability. Any insurer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

1. Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the board; or

2. By purchasing an annuity within the limitations provided by law in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

9. Cancellation of insurance policy. No policy of insurance issued under the provisions of compensation plan No. 2 shall be cancelled within the time limited for its expiration except upon thirty (30) days' notice to the employer in favor of whom such policy is issued, and to the board unless such policy sought to be cancelled shall have been sooner replaced by other insurance.

10. Report of insurance companies to board. Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

11. Policies to contain clause agreeing to do what—approval or change. Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

12. Deposits under plan No. 2 as security. Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which



the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of such deposit, and shall at any time upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

### COMPENSATION PLAN NUMBER THREE

1. It is the intent and purpose of compensation plan No. 3 that each employer subject to and bound by this plan shall be liable and pay for all disability to employees due to occupational diseases coming under the provisions of this plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the occupational disease compensation fund, which fund shall be devoted exclusively to the payment of all valid claims for disability from occupational diseases arising out of or in the course of employment coming under the provisions of compensation plan No. 3. Such fund shall consist of all assessments and penalties received and paid into the fund, or property and securities acquired by and through the use of money belonging to the fund, and interest earned upon money belonging to the fund, together with any money appropriated by the legislature for the purpose of this act. The accounts of employers insured in such fund shall be kept in such a manner as the board may prescribe for the purpose of providing information and statistics necessary for determining any changes in rates of classification of employment. The occupational disease compensation fund shall be neither more nor less than self-supporting.

2. Any employer, whether subject to and bound by this act or not, may elect to comply with the provisions of compensation plan No. 3 and pay into the occupational disease compensation fund the premiums provided in this act, in which event such employer shall not be liable to respond in damages at common law or by statute for disability or death of an employee due to an occupational disease during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such an employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn.

3. All employments, occupations, or industries affected by the provisions of compensation plan No. 3 shall be divided by the board for the purpose of the occupational disease compensation fund into classes whose

rates may be set and readjusted at such times as the board may determine. The board may rearrange the classes by withdrawing any employment embraced in one class and transferring it wholly or in part to another class. Separate accounts shall be kept if [of] the amounts collected and expended in each class for determining rates, but for paying compensation and dividends the fund shall be one and indivisible. The board shall determine the hazard of the different classes of occupations or industries, and fix the rates of assessment therefor at a percentage of the annual total payroll of such employer at the lowest rate consistent with the maintenance of a solvent occupational disease compensation fund, and the creation of necessary surpluses and reserves, and for such purpose may adopt a system of scheduling in such a manner as to take account of the peculiar hazard of each individual risk. The board, in fixing rates, shall provide for the expenses of administering the fund, the disbursements on account of occupational disease to employees in each class, reserves adequate to meet anticipated and unexpected losses, reserves adequate to carry the class to maturity, and such other necessary reserves and surpluses as may be determined by the board. The board is authorized, in its discretion, to apply tentative rates, subject to modification in accordance with the loss experience of such risks.

4. The initial payment of assessments provided for herein by employers, whether presently engaged in a business, occupation or industry, subject to this act, or an employer who enters such business, occupation or industry at some future date, and all subsequent payment of assessments herein provided shall be made at such times and in such amounts as may be ordered and prescribed by the board.

5. Any employer who is in default in the observance of any order of the board issued pursuant to the provisions of this act, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum (25%) over the established rate, and such advance rate shall continue to be in force until such employer shall have ceased to be in such default.

6. If at the end of any year, it shall be seen that the contribution to the occupational disease compensation fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class, in proportion to their respective payments for the previous year.

7. The treasurer of the board shall invest in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid such compensation and benefits as the board may direct; provided, however, that when there is sufficient money in the occupational disease compensation fund to meet such compensation payments, any surplus or earnings remaining may be placed in a reserve fund and invested in the securities specified in this section.

8. If any employer shall default in any payment to the occupational disease fund, the sum due may be collected by an action at law in the name

of the state and such right of action shall be cumulative. The board is hereby authorized, in its discretion, to cancel any employer's right to operate under compensation plan No. 3 for failure to pay the premiums due the occupational disease compensation fund; provided, that when the board makes an order cancelling an employer's right for failure to pay premiums or assessments to the occupational disease compensation fund it shall be the duty of the board to make such order at least sixty (60) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties wherein the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices to the effect that the board has cancelled the right of the said employer to operate under the act, and said notice shall give the date of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the occupational disease act.

When an employer's right to operate has been cancelled by the board for failure to pay premiums and when the board, in its discretion, finds that the property and assets of said employer are not sufficient to pay said premiums, the board may compromise said claim for premiums and accept a payment of an amount less than the total amount due.

9. For any disability to any employee resulting from an occupational disease occurring during default in any payment to the occupational disease compensation fund, the defaulting employer as to such disability shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the occupational disease compensation fund the amount of such default together with the penalty prescribed in subsection 5 of this section.

10. The person entitled to sue under the provisions of subsection 9 of this section shall have the option of proceeding by suit or taking under this act. If such persons take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the occupational disease compensation fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

11. Any cause of action assigned to the state under the provisions of subsection 10 of this section may be prosecuted or compromised by the board in its discretion.

12. Where an employee is entitled to compensation under compensation plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician attending him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the employee; provided that the filing of a certificate of the attending physician shall not constitute a sworn claim for compensation.

13. For proper compliance with the provisions of subsection 12 of this section, the physician, after approval by the board, shall be paid out of the occupational disease compensation fund, five dollars (\$5.00) for each case.



14. Where death results from an occupational disease, the parties entitled to compensation under compensation plan No. 3, or someone in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the board.

15. In computing the pay-roll of any employer the entire compensation received by any employee subject to this act shall be included, whether it be in the form of salary, wage, piecework, or otherwise and whether payable in money, board or otherwise.

16. Disbursements out of the occupational disease compensation fund shall be made by the treasurer of the board, as the board may order. If at any time there shall not be sufficient money in the occupational disease compensation fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six per centum (6%) per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

17. All earnings made by the occupational disease compensation fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the occupational disease compensation fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two (2) years, or a fine not exceeding five thousand dollars (\$5,000.00), or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

History: En. Sec. 34, Ch. 155, L. 1959.

**92-1335. Hearing, findings and awards.** Upon receiving a demand for hearing or rehearing by a party dissatisfied by either the first or second determination of compensability by the board, as provided in section 15 [92-1315], the board shall hold such hearing within ninety (90) days from the date of demand for hearing or rehearing. After the final hearing by the board, it shall within thirty (30) days, make and file a finding upon all facts involved in the controversy, and its award, which shall state its determination as to the rights of the parties.

History: En. Sec. 35, Ch. 155, L. 1959.

**92-1336. Power of board to award compensation and time and manner of payment.** The board in its award may fix and determine the total amount of compensation to be paid, and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid, subject to the limitations in this act contained; providing, however, that the pay-

ment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.

History: En. Sec. 36, Ch. 155, L. 1959.

**92-1337. Where payment due to child under eighteen years.** Where payment is due to a child under eighteen (18) years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or board, as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 37, Ch. 155, L. 1959.

**92-1338. Payment of compensation shall begin.** Payment of compensation under this act shall begin on July 1, 1959.

History: En. Sec. 38, Ch. 155, L. 1959.

**92-1339. Common law defenses not available.** A. Employers subject to and who fail to comply with the provisions of section 34 [92-1334] of this act shall not be entitled to the benefits of this act during the period of noncompliance, and shall not avail himself of the defenses:

1. That the employee was negligent, unless such negligence was wilful;

2. That the disability was caused by the negligence of a fellow employee;

3. That the employee had assumed the risks inherent, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools or appliances.

History: En. Sec. 39, Ch. 155, L. 1959.

**Compiler's Note**

This section as enacted contained no subsection "B."

**92-1340. Penalties for violation.** An employer subject to this act who fails to comply with section 34 [92-1334] of this act, or a person who violates any other provision of this act, does an act prohibited thereby, or fails or refuses to perform a duty imposed by this act within the time prescribed by law or by the board for which no penalty is specifically provided, or fails, neglects or refuses to obey an order of the board or a judgment of a court under the provisions of this act, is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) nor more than six hundred dollars (\$600.00) for the first offense, and not less than two hundred dollars (\$200.00) nor more than twelve hundred dollars (\$1200.00) for each subsequent offense.

History: En. Sec. 40, Ch. 155, L. 1959.

**92-1341. Deduction from wages of any part of a premium misdemeanor—hospital contributions.** It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages of earnings of his workmen, or any of them, and the

making or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.

History: En. Sec. 41, Ch. 155, L. 1959.

**92-1342. False representation by employee.** No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of such disease when the contrary is true.

History: En. Sec. 42, Ch. 155, L. 1959.

**92-1343. Legal action by board.** Upon request of the board, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this act or for the recovery of money due the state occupational disease compensation fund or for any penalty provided for in this act, and he shall prosecute or defend all actions brought by or against the board, or the members thereof in their official capacity. The board may compromise any action brought under this act.

History: En. Sec. 43, Ch. 155, L. 1959.

**92-1344. Board may sue and be sued.** The industrial accident board of Montana may sue and be sued in its own name. Service of summons and other processes on the chairman of the industrial accident board shall be deemed service on the board.

History: En. Sec. 44, Ch. 155, L. 1959.

**92-1345. Board shall adopt rules and regulations.** Subject to the provisions of this act, the board shall adopt and publish rules and regulations governing procedure before it, and shall prescribe forms of notice and manner of serving the same in all claims for compensation, and may change the same from time to time at its discretion.

History: En. Sec. 45, Ch. 155, L. 1959.

**92-1346. Claim forms prescribed by board.** Claims for compensation under this act shall be filed on forms prescribed and provided for by the board and shall be filed in the same manner as claims for compensation under the workmen's compensation act unless in this act otherwise provided.

History: En. Sec. 46, Ch. 155, L. 1959.

**92-1347. Power of board in certain matters.** A. Each member of the board and referees appointed by the board, for the purposes provided in this act, may administer oaths, certify official acts, issue subpoenas, compel attendance of witnesses and production of papers, books, accounts, documents and evidence.

History: En. Sec. 47, Ch. 155, L. 1959.

**Compiler's Note**

This section as enacted contained no subsection "B."



**92-1348. Confidential information used, how.** No information furnished to the board by an employer or an insurer shall be open to public inspection, or made public except on order of the board, or by the board or a member of the board, in the course of a hearing or proceeding. Any officer or employee of the board who, in violation of the provisions of this section, divulges any information, shall be guilty of a misdemeanor.

**History:** En. Sec. 48, Ch. 155, L. 1959.

**92-1349. American experience table of mortality used.** Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American experience table of mortality shall be used.

**History:** En. Sec. 49, Ch. 155, L. 1959.

**92-1350. Hearings and investigations—technical rules.** Hearings and investigations before the board, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the board, and in the conduct thereof neither the board nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings or in the manner of taking testimony shall invalidate any order, decision, award, rule, or regulation made, approved, or confirmed by the board.

**History:** En. Sec. 50, Ch. 155, L. 1959.

**92-1351. Depositions may be taken.** The board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

**History:** En. Sec. 51, Ch. 155, L. 1959.

**92-1352. Powers of board.** The board is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

**History:** En. Sec. 52, Ch. 155, L. 1959.

**92-1353. Powers to issue writs and process—fees for serving.** The board, and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board or any member thereof shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed

by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

History: En. Sec. 53, Ch. 155, L. 1959.

**92-1354. Power to administer oaths, certify official acts, issue subpoenas—witness fees and mileage.** The board and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in an inquiry, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear by order of the board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

History: En. Sec. 54, Ch. 155, L. 1959.

**92-1355. Power of district court concerning production of testimony—contempt.** The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case of proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order,

not more than ten (10) days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production [of] papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

History: En. Sec. 55, Ch. 155, L. 1959.

**Compiler's Note**

The bracketed word "of" was inserted by the compiler.

**92-1356. Certificates and certified copies as evidence.** Copies of official documents and orders filed or deposited according to law in the office of the board, certified to by a member of the board, or by the secretary under the official seal of the board, to be true copies of the original, shall be evidence in like manner as the originals. In any court proceeding, wherein the question as to whether or not an employer or employee has complied with and is operating under and bound by the provisions of the occupational disease act of Montana, is a question for determination, a certificate by a member of the board, or by the secretary under the official seal of the board, certifying that such employer or employee has or has not complied with, and is or is not operating under, and is or is not bound by the provisions of the occupational disease act of Montana, shall be prima facie evidence thereof.

History: En. Sec. 56, Ch. 155, L. 1959.

**92-1357. Apportionment of costs and disbursements—expenses.** The costs and disbursements incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing, arising out of cases under plan No. 3, may be paid from the occupational disease compensation fund, and in the discretion of the industrial accident board, including the necessary traveling and other expenses and disbursements of the members of the board, its referees or officers or employees incurred while actually conducting investigations, hearings or proceedings, within or without the state of Montana.

History: En. Sec. 57, Ch. 155, L. 1959.

**92-1358. Books, records and payrolls to be open to inspection.** The books, records, and payrolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the payroll, the number of men employed, and such other information as may be necessary for the board and its management under



this act. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject the offending employer to a penalty of one hundred dollars (\$100.00) for each offense, to be collected by civil action in the name of the state, and paid into the industrial administration fund.

**History:** En. Sec. 58, Ch. 155, L. 1959.

**92-1359. Jurisdiction of board to hear disputes and controversies.** All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

**History:** En. Sec. 59, Ch. 155, L. 1959.

**92-1360. Presumption as to legality of rules, orders, findings, etc., of board.** All orders, rules and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed by be reasonable and lawful, until and unless they are modified or set aside by the board or upon review.

**History:** En. Sec. 60, Ch. 155, L. 1959.

**92-1361. Collateral attack not permitted.** No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided therein.

**History:** En. Sec. 61, Ch. 155, L. 1959.

**92-1362. Appeal to district court.** Within thirty (30) days after the rendition of the final decision of the board provided in this act and within twenty (20) days after notice thereof, any party affected thereby, may appeal to the district court of the judiciary district of the state of Montana, in and for the county in said state wherein the occupational disease disability occurred or the employer may have a place of residence, or if such employer be a corporation may have his principal office or place of business and said appeal shall be for the purpose of having the lawfulness of the determination, order, decision or award inquired into and determined.

**History:** En. Sec. 62, Ch. 155, L. 1959.

**92-1363. Procedure upon appeal.** The said appeal shall be taken pursuant to the provisions of section 92-834, Revised Codes of Montana, 1947.

**History:** En. Sec. 63, Ch. 155, L. 1959.

**92-1364. Appearance on appeal.** Appearances shall be made and judgment rendered in the manner set forth in section 92-835, Revised Codes of Montana, 1947.

**History:** En. Sec. 64, Ch. 155, L. 1959.

**92-1365. Appeal to supreme court.** Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court

of the state of Montana from any final order, judgment, or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court, without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

**History:** En. Sec. 65, Ch. 155, L. 1959.

**92-1366. Employer liability.** There is imposed on every employer subject to this act a liability for the payment of compensation as herein provided.

**History:** En. Sec. 66, Ch. 155, L. 1959.

**92-1367. No vested right to compensation.** The right to the compensation provided for herein shall not, nor shall the rate or amount thereof be, or become vested or continuing rights, in persons awarded compensation under this act, or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this act or any amendment hereof, or to wholly discontinue to all persons all compensation provided for by this act, or any amendment hereof.

**History:** En. Sec. 67, Ch. 155, L. 1959.

**92-1368. This act to be liberally construed.** Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

**History:** En. Sec. 68, Ch. 155, L. 1959.

#### **Repealing Clause**

Section 69 of Ch. 155, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### **Effective Date**

Section 70 of Ch. 155, Laws 1959 provided the act should be in effect from and after its date of passage and approval. Approved March 7, 1959.









# REVISED CODES OF MONTANA

## VOLUME 7 1959 Cumulative Pocket Supplement

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE  
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME  
THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

*Edited by*

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

*Editorial Supervisor*

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana





COPYRIGHT 1959  
*by*  
THE ALLEN SMITH COMPANY

## NEW LAWS IN VOLUME 7

For index see pocket supplement to Replacement Volume 9

### ENACTED IN 1953

Eminent domain proceedings for natural gas reservoir, effect on landowners, 93-9903.1.  
Pleadings, 93-3820.  
Reproductions of original records, 93-801-5, 93-801-6.

### ENACTED IN 1955

Application of chapter on limitations on real property actions to lands sold and conveyed by state, 93-2516.

### ENACTED IN 1957

Supreme court judge seeking elective office, resignation from supreme court, 93-219, 93-220.

### ENACTED IN 1959

Federal Rules of Civil Procedure—proposed adoption, 93-221 to 93-233.  
Partition of personal property, 93-6301.1, 93-6301.2.

## AMENDMENTS IN VOLUME 7

Appeals, 93-8007.  
Attachment, 93-4304.  
Challenges for cause, 93-5011.  
Court stenographers, 93-1906.  
Depositions, 93-1801-4.  
District courts, 93-302.  
District judges, salary and expenses, 93-303, 93-305, 93-314.  
Eminent domain, 93-9902, 93-9903, 93-9908, 93-9909, 93-9911, 93-9913.  
Evidence, disclosure of source of information, 93-601-2.  
Exceptions, 93-5505.  
Juries and jurors, 93-1401, 93-1402, 93-1404, 93-1501 to 93-1506, 93-1509 to 93-1511.  
Limitations of actions, 93-2502.  
Limitations on real property actions, 93-2504 to 93-2508, 93-2512, 93-2513, 93-2515.  
Process,  
    Service by publication, 93-6206, 93-6207.  
    Service on corporations, 93-3008.  
Terms of district court, 93-315, 93-316.  
Trial by court or jury, 93-4905.





# MONTANA REVISED CODES

## TITLE 93—CIVIL PROCEDURE

- Chapter 2. Supreme court, 93-219 to 93-233.
3. District courts, 93-302, 93-303, 93-305, 93-314 to 93-316.
  14. Jurors—selection and return, 93-1401, 93-1402, 93-1404.
  15. Jurors—drawing and summoning for courts of record, 93-1501 to 93-1506, 93-1509 to 93-1511.
  19. Court stenographers, 93-1906.
  25. Limitation of actions for recovery of real property, 93-2502, 93-2504 to 93-2508, 93-2512, 93-2513, 93-2515, 93-2516.
  30. Manner of commencing civil actions—service of summons, 93-3008, 93-3010.
  38. General rules of pleading, 93-3820.
  43. Attachment, 93-4304.
  49. Issues—mode of trial and postponement—procedure to procure jury trial, 93-4905.
  50. Trial by jury—formation of jury—challenges, 93-5011.
  55. Exceptions—settlement and allowance of bill, 93-5505.
  62. Quieting title to property, real and personal and other actions concerning real estate, 93-6206, 93-6207.
  63. Partition of real estate—actions for, 93-6301.1, 93-6301.2.
  80. Supreme court—appeals to, 93-8007.
  99. Eminent domain, 93-9902 to 93-9903.1, 93-9908, 93-9909, 93-9911, 93-9913.
  601. Evidence—Reporters' Confidence Act, 93-601-2.
  801. Evidence—Uniform Business Records as Evidence Act—Uniform Photographic Copies of Business and Public Records as Evidence Act, 93-801-5, 93-801-6.
  1801. Evidence—depositions, how taken within and without the state, 93-1801-4.

## CHAPTER 2—SUPREME COURT

- Section 93-219. Judge becoming candidate for elective office—resigning of supreme court office—exceptions—vacancy.
- 93-220. Filling vacancy.
  - 93-221. Intention and purpose of act—adoption of Federal Rules of Civil Procedure.
  - 93-222. Commission—appointment—duties.
  - 93-223. Members of commission—selection.
  - 93-224. Proposed rules of pleading, practice and procedure—preparation—distribution.
  - 93-225. Tentative final draft of proposed rules—submission to supreme court.
  - 93-226. Notice of hearing on tentative final draft—time for hearing.
  - 93-227. Local rules of practice.
  - 93-228. Act not to affect powers of boards or commission in making rules governing their own practice.
  - 93-229. Rules not effective until adopted by legislature.
  - 93-230. Changes, amendments and additional rules.
  - 93-231. Employees of commission—employment of services of research agency.
  - 93-232. Expenses of members of commission.
  - 93-233. Officers—records—rules and regulations.

93-201. (8790) Justices—number increased to five, etc.

### Cross-Reference

Assistant law librarian to act as law clerk, sec. 44-408.

**93-207. (8796) Repealed.****Repeal**

This section (Sec. 1, Ch. 43, L. 1905), fixing the salaries of the justices of the supreme court, was repealed, as Sec. 8796,

Revised Codes, 1935, by Sec. 4, Ch. 182, Laws 1949. For present law, see sec. 25-501.

**93-212. (8801) Decisions to be in writing.****References**

Cited or applied in State ex rel. Olsen v.

Public Service Commission, 131 M 104, 308 P 2d 633, 635.

**93-214. (8803) Original jurisdiction.****Injunction**

Supreme Court declined jurisdiction in action for injunction to restrain county officials from drawing or issuing certain warrants where numerous questions of fact were present which would require the taking of testimony and submission of other evidence which could be more speedily done in district court. Porter v. Thielen, 124 M 607, 214 P 2d 743.

sued to end litigation and save expense. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052, 1054.

Supreme Court had jurisdiction to grant writ of prohibition to prevent payment of grand jury illegally in session. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

**Writ of Prohibition**

The writ of prohibition may be is-

**References**

Cited in State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765; Application of Cowan, 131 M 509, 312 P 2d 124.

**93-215. (8804) Appellate jurisdiction.****References**

Cited or applied in Bond v. Birk, 126 M 250, 247 P 2d 199, 206.

**93-216. (8805) Powers and duties of supreme court on appeals.****Equity Appeals**

In an equity case, where no cause appears why a new trial or the taking of further evidence should be ordered, it is the court's duty to finally determine the same. Fey v. A. A. Oil Corporation, 129 M 300, 285 P 2d 578, 589.

their demeanor and appearance, and hence was in a better position to judge of their credibility. Reynolds v. Reynolds, 132 M 303, 317 P 2d 856, 857.

In entering upon a review of the evidence on appeal in equity case, Supreme Court indulges the presumption that the judgment of the trial court is correct, and will draw every legitimate inference therefrom to support the presumption. Havre Irrigation Co. v. Majerus, 132 M 410, 318 P 2d 1076, 1078.

**Equity Cases**

Under this section the Supreme Court is authorized in reviewing the decrees in equity cases, where all of the facts were presented on an appeal and showed that the cause was ripe for an ultimate decision, to make such disposition of the case as the court below ought to have made; the reluctance of an occasional judge to abide by and apply the foregoing mandates of the legislature neither repeals nor changes the statute. Bond v. Birk, 126 M 250, 247 P 2d 199, 205, 206.

It is the trial court's office to resolve inconsistencies in the testimony, and where the evidence, fully considered, furnishes reasonable grounds for different conclusions the findings of the trial court will not be disturbed by the Supreme Court on appeal. Havre Irrigation Co. v. Majerus, 132 M 410, 318 P 2d 1076, 1078.

Separate maintenance action by wife, being an equity case, Supreme Court had the right and duty to review the facts, but this power or duty did not necessarily require the overturning of the findings made by the trial judge. Reynolds v. Reynolds, 132 M 303, 317 P 2d 856, 857.

In an equity action, the Supreme Court will review all questions of law and fact presented in the record on appeal. Havre Irrigation Co. v. Majerus, 132 M 410, 318 P 2d 1076, 1078; Tillinger v. Frisbie, 132 M 583, 318 P 2d 1079, 1083.

Findings of trial judge will be sustained by Supreme Court where the evidence is conflicting, since he had the advantage of having seen the witnesses and observed

Appeals in equity require a disposal by the Supreme Court which will put an end to litigation and avoid the necessity of new trials involving expense and the contingencies incident to delay. Bradbury v. Nagelhus, 132 M 417, 319 P 2d 503, 510.

### Examination of Evidence in Equity Proceedings and Disposition of Cases

In equity cases Supreme Court has right to make independent findings of fact after a review of all evidence, but if there is in the record substantial evidence supporting the findings of the trial court Supreme Court will not interfere with those findings. *Sanders v. Sanders*, 124 M 595, 229 P 2d 164. (The court was evenly divided on this point, see dissenting opinion.)

### Function of Supreme Court as to Questions of Fact

In an equity case on appeal the court reviews all questions of fact arising upon the evidence presented and determined such questions of fact as well as the questions of law, unless for good cause, a new trial or the taking of further evidence is ordered in the court below. *Hart v. Barron*, 122 M 350, 204 P 2d 797, 804.

### Operation and Effect

Under the power granted to the Supreme Court by this section, the court may direct that a proper judgment be entered in any case. Thus in a quiet title action, where the lower court found that at the time of the commencement of the action the plaintiff was in ownership, but the judgment states that since the filing of the complaint and at all times thereto the plaintiff was in ownership, the judgment is modified to conform with the findings. *Warren v. Warren*, 127 M 259, 261 P 2d 364, 366.

### Stipulation of Facts

Where the facts set forth in opinion were stipulated and no objections made to their sufficiency or correctness, the Supreme Court is in as advantageous a position to do justice in the cause as was the trial court. No presumption obtains in such a case as to the correctness of the trial court's decision since supreme court is empowered to completely review the record. *Pluhar v. Guderjahn*, — M —, 328 P 2d 129, 131, 132.

### References

Cited or applied in *Miller v. Miller*, 121 M 55, 190 P 2d 72; *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 123 M 396, 217 P 2d 549, 553; *Higby v. Hooper*, 124 M 331, 221 P 2d 1043, 1048; *Sullivan v. Marsh*, 124 M 415, 225 P 2d 868, 871; *Sheridan County Electric Co-op. v. Anhalt*, 127 M 71, 257 P 2d 889, 893; *Rooney v. Ford*, 127 M 92, 256 P 2d 1090, 1093, 1094; *Erdmann v. Erdmann*, 127 M 252, 261 P 2d 367, 370; *In re Sikorski's Estate*, 127 M 563, 268 P 2d 395, 399; *In re Stoian's Estate*, 128 M 52, 269 P 2d 1085, 1089 (dissenting opinion); *In re Minder's Estate*, 128 M 1, 270 P 2d 404, 408, 45 ALR 898; *Hjermstad v. Barkuloo*, 128 M 88, 270 P 2d 1112, 1118; *In re Spoya's Estate*, 129 M 83, 282 P 2d 452, 457; *Bennett v. Dodgson*, 129 M 228, 284 P 2d 990, 994; *Richland County v. Anderson*, 129 M 559, 291 P 2d 267, 274; *Hansen v. Hansen*, 130 M 175, 297 P 2d 879, 884; *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 605 (dissenting opinion); *Hansen v. Hansen*, 130 M 496, 304 P 2d 1107, 1108; *Bronson v. Gillan*, 131 M 296, 309 P 2d 625, 628.

**93-219. Judge becoming candidate for elective office—resigning of supreme court office—exceptions—vacancy.** Whenever any person holding or occupying the office of chief justice or associate justice on the supreme court of the state of Montana shall become a candidate for election to any elective office under the laws of or in the state of Montana, such person shall forthwith, and in any event at or before the time required for such person to file as a candidate for such office at any primary or special or general election, resign said office of chief justice or associate justice of said supreme court except where such person is a bona fide candidate for re-election to the identical office then held or occupied by him or for another non-partisan judicial office the term of which shall commence not earlier than the end of the term of the office then held or occupied by such justice and said resignation shall become effective forthwith on delivery of the same to the proper officer or superior, and in the event of failure so to resign said office of chief justice or associate justice of said supreme court or of district judge of any of said district courts the same shall, ipso facto, become wholly vacant and unoccupied and the said former holder or occupant shall have no further right, power, or authority therein for any purpose, and no right to any emoluments thereof, notwithstanding the fact



that a successor is not appointed or elected; and said vacancy shall become operative to deprive any person of the emoluments of said office then held in order to carry out the policy of this act.

**History:** En. Sec. 1, Ch. 139, L. 1957.

**Title of Act**

An act providing that any justice of the supreme court of the state of Montana who becomes a candidate for any elective office except as a bona fide candidate for re-election to the office then occupied by such justice shall at or before filing for

said elective office as required by law resign the office then held; providing that the office of any said justice of the said supreme court failing to so resign shall become vacant; giving directions with reference to the filling of such vacancy and for the repeal of any and all acts, statutes or code provisions in conflict therewith; and providing for an effective date.

**93-220. Filling vacancy.** In all cases the proper appointing or other power shall promptly fill all vacancies occurring because of the provisions of this act by appointment of competent and qualified persons according to law.

**History:** En. Sec. 2, Ch. 139, L. 1957.

**Repealing Clause**

Section 3 of Ch. 139, Laws 1957 read "All acts and parts of acts, statutes and/or code provisions inconsistent herewith are, and each thereof is, hereby expressly repealed."

**Effective Date**

Section 4 of Ch. 139, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

**93-221. Intention and purpose of act—adoption of Federal Rules of Civil Procedure.** The intent and purpose of this act is to make possible the adoption of the Federal Rules of Civil Procedure so far as seems presently practicable to the existing Montana Code to the end of uniformity, but not at the expense of existing procedural statutory rules that may be better for Montana state practice.

**History:** En. Sec. 1, Ch. 255, L. 1959.

**Title of Act**

An act authorizing and empowering the supreme court of the state of Montana to recommend rules of pleading, practice and procedure in civil cases in the courts of the state of Montana, for the purpose of simplifying judicial proceedings and promoting the speedy determination of litigation upon its merits; creating a commission to prepare suggested rules of procedure of the state of Montana and prescribing the membership and powers and duties of said commission; providing for

employment of a secretary-stenographer of the commission and employment of research agencies, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended rules of pleading, practice and procedure shall be submitted to the thirty-seventh legislative assembly of the state of Montana for its consideration; repealing all acts and parts of acts in conflict herewith and providing for an effective date of this act.

**93-222. Commission — appointment — duties.** That within thirty (30) days following the adjournment of this legislative assembly, the supreme court of Montana shall appoint a commission of eleven (11) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall make a complete study, consider and finally prepare Rules of Civil Procedure of the state of Montana, which rules shall be comprehensive in scope, except as limited by the statement of intent set forth in section 1 [93-221] of this act.

**History:** En. Sec. 2, Ch. 255, L. 1959.

**93-223. Members of commission—selection.** The commission shall be composed of the chief justice of the supreme court of the state of Montana, or an associate justice of the supreme court designated by the chief justice, three (3) judges from the district courts of the state, and seven (7) lawyers. At least five (5) of these lawyer-members of the commission shall be members of the Montana bar association and all of the lawyers designated shall be lawyers actively practicing law in the state of Montana or members of the faculty of the law school of the university of Montana. The judges so selected shall include the president of the Montana judges' association and shall be from a list of suggested members submitted to the supreme court by the president of the Montana judges' association. The lawyers so selected shall include the president of the Montana bar association and shall be from a list of suggested members submitted to the supreme court by the president of the Montana bar association. The supreme court shall have the power to provide for terms of office, removals from office, filling of vacancies and changes in personnel of the commission.

**History:** En. Sec. 3, Ch. 255, L. 1959.

**93-224. Proposed rules of pleading, practice and procedure—preparation—distribution.** The commission so appointed shall prepare proposed rules of pleading, practice and procedure, and shall distribute copies to the bench and bar of the state for their consideration and suggestions as they may submit to the commission.

**History:** En. Sec. 4, Ch. 255, L. 1959.

**93-225. Tentative final draft of proposed rules—submission to supreme court.** The commission shall within six (6) months after distribution of copies of the proposed rules submit the tentative final draft of proposed rules of civil procedure for Montana, to the supreme court for approval.

**History:** En. Sec. 5, Ch. 255, L. 1959.

**93-226. Notice of hearing on tentative final draft—time for hearing.** The submission of the tentative final draft to the supreme court will be noticed by the court by mailing notice of hearing to all district judges of the state and all attorneys licensed to practice in the Montana courts, as shown by the records of the clerk of the supreme court, and heard by it within ninety (90) days after submission by the commission, and all interested persons and organizations may appear that day by petition specifying their suggestions or objections thereon.

**History:** En. Sec. 6, Ch. 255, L. 1959.

**93-227. Local rules of practice.** Any district court and the supreme court, may adopt rules of court governing its practice so long as such rules are not in conflict with the rules promulgated by the supreme court of the state of Montana, and duly adopted by the legislature in accordance with this act, or with valid statutes of the state of Montana.

**History:** En. Sec. 7, Ch. 255, L. 1959.

**93-228. Act not to affect powers of boards or commission in making rules governing their own practice.** This act shall not affect the power of

any constitutional or statutory commission or board to make rules governing its practice.

History: En. Sec. 8, Ch. 255, L. 1959.

**93-229. Rules not effective until adopted by legislature.** Any rules promulgated under this act shall be effective only upon adoption by the legislature.

History: En. Sec. 9, Ch. 255, L. 1959.

**93-230. Changes, amendments and additional rules.** The supreme court of this state shall have the right to suggest changes, amendments and additional rules of civil procedure of the state of Montana from time to time. Such changes, amendments, and additional rules shall be accomplished by the procedure as set out in this act.

History: En. Sec. 10, Ch. 255, L. 1959.

**93-231. Employees of commission—employment of services of research agency.** The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

History: En. Sec. 11, Ch. 255, L. 1959.

**93-232. Expenses of members of commission.** Members of said commission shall serve without compensation, but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 12, Ch. 255, L. 1959.

**93-233. Officers—records—rules and regulations.** The said commission shall from time to time elect one of its members as chairman, and may from time to time elect such other officers from among its membership as the commission may deem desirable. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 13, Ch. 255, L. 1959.

phrases may be declared unconstitutional or invalid."

#### Separability Clause

Section 14 of Ch. 255, Laws 1959 read "If any sentence, section, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or

#### Repealing Clause

Section 15 of Ch. 255, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 16 of Ch. 255, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 13, 1959.

### CHAPTER 3—DISTRICT COURTS

Section 93-302. Number of judges.

93-303. Salaries of district judges.

93-305. Expenses when sitting out of district, or attending judges' conference.



93-314. Itemized statements—verification—filing.

93-315. Terms of court.

93-316. Adjournments—terms in districts of more than one county.

### 93-301. (8812) Judicial districts defined.

#### References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State v. Sagainaw, 124 M 225, 220 P 2d 1021, 1024.

**93-302. (8813) Number of judges.** In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district, and whose term of office must be four (4) years, to wit: In the first, second, fourth, eighth, eleventh and sixteenth, two judges each, in the thirteenth, three judges, and, in all other districts, one judge each; and from and after the first Monday in January, 1961, there must be three judges in the eighth judicial district, which third judge in said judicial district shall be nominated and elected by the electors of said district in and at the 1960 primary and general elections.

Appointment and election of judge. That on or before July 1, 1957, the governor of this state shall designate and appoint a judge of the said eleventh judicial district who shall hold office until the general election to be held during the year 1958, and until his successor is elected and qualified. The judge elected at the general election during the year 1958 shall hold office until his successor has been elected and qualified at the presidential general election to be held during the year 1960.

**History:** En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1929; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959.

#### Amendments

The 1955 amendment in the first paragraph deleted the word "thirteenth" from the list of districts having two judges each and inserted the words "in the thirteenth, three judges and," and added the second paragraph.

The 1957 amendment in the first paragraph added "eleventh" to the list of districts having two judges each and in the second paragraph inserted the words "and election" to the heading of said paragraph, substituted "eleventh" for "thirteenth," "general election to be held during the year 1958" for "next general election" and added the second sentence.

**93-303. (8814) Salaries of district judges.** The annual salary of each district judge shall be nine thousand five hundred dollars (\$9,500).

**History:** En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959.

#### Compiler's Note

Although the Title of chapter 198 stated

The 1959 amendment added to the first paragraph the final clause, providing for three judges for the eighth district.

#### Repealing Clauses

Section 2 of Ch. 18, Laws 1955; Sec. 2, of Ch. 91, Laws 1957 and Sec. 2 of Ch. 161, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 3 of Ch. 18, Laws 1955 provided the act should be in effect immediately upon its passage and approval. Approved February 11, 1955.

Section 3 of Ch. 91, Laws 1957 provided the act should be in effect immediately upon its passage and approval. Approved March 4, 1957.

#### References

Cited or applied in Deich v. Deich, — M —, 323 P 2d 35, 38.

that the act provided an effective date, the body of the act itself did not contain a specific effective date.

#### Amendments

The 1951 amendment raised the salary from \$6,000 to \$7,500.

The 1955 amendment raised the salary from \$7,500 to \$9,000.

The 1959 amendment raised the salary from \$9,000 to \$9,500.

#### Repealing Clauses

Section 2 of Ch. 84, Laws 1951; Sec. 2 of Ch. 247, Laws 1955 and Sec. 2 of Ch. 198, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 3 of Ch. 84, Laws 1951 provided the act should be in effect from and after December 1, 1952.

Section 3 of Ch. 247, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 11, 1955.

**93-305. (8816) Expenses when sitting out of district, or attending judges' conference.** Every judge who shall sit in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own, or in the supreme court, or who shall attend a conference of judges in Helena called by the chief justice of the supreme court, shall be paid his actual expenses while engaged in that service as follows: His actual traveling expenses in going from the county seat which he makes his place of residence to the place of trial, or conference, and return, and his board and lodging while engaged in the trial, hearing, or conference.

**History:** En. Sec. 1, Ch. 3, L. 1907; Sec. 293, Rev. C. 1907; re-en. Sec. 8816, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1953.

#### Amendment

The 1953 amendment added the provi-

sions in this section relating to a conference of judges.

Judges  $\Rightarrow$  22(10).

48 C.J.S. Judges § 36.

### 93-309. (8820) Vacancies.

#### Retirement

Retirement of a district judge under the provisions of sections 68-101 to 68-1313

creates a vacancy which must be filled by the governor. State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 425.

### 93-310. (8821) District courts by judges of other counties.

#### Authority of Judge

This section and section 93-2906 give a judge called in under the provisions of section 93-901 the authority to draw ad-

ditional jurors from jury box No. 3 for the remainder of the term under the provisions of section 93-1510. State v. Hay, 120 M 573, 194 P 2d 232, 234.

### 93-312. (8823) Governor may require judge to hold court, etc.

#### Authority of Governor

Where there is a duly qualified and acting judge in district governor is with-out power to order judges of other district into various counties of his district to assume judicial powers in such county. State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

This section does not empower the governor to exclude or remove from office the duly elected qualified and acting judge of

a judicial district. State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

#### Judge Declining to Perform Duties

If a judge declines to properly perform his official duties, relief must be had from the supreme court rather than from the executive power of the state. State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

**93-314. (8825) Itemized statements—verification—filing.** On the first of each month, or within three (3) days thereafter, such district judge, who may desire to avail himself of the provisions of this act, shall make out an itemized claim against the state of Montana, showing, with dates and particulars, all moneys by him, within the preceding month, paid out and expended for and on account of such expenses; and shall verify such claim by making thereon or appending thereto his sworn affidavit that the items

of the claim are true and correct, and are wholly unpaid, and that the expenditures therein enumerated were actually and necessarily made in the discharge of official business while away from home. He shall then file such claim with the clerk of the state board of examiners. At the first meeting of the board thereafter, the state board of examiners shall allow such claim, if properly verified, as above provided, and order a warrant drawn in payment thereof, and the state auditor shall thereupon, and in pursuance thereof, draw and issue a warrant of the state of Montana in payment of such claim, and forward the same to the claimant and take a receipt therefor.

**History:** En. Sec. 2, Ch. 91, L. 1911; re-en. Sec. 8825, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1951.

#### **Amendment**

The 1951 amendment substituted "On the

first of each month" for "Twice a year, on the first days of January and July of each year" and substituted "within the preceding month" for "within the last preceding six months."

**93-315. (8826) Terms of court.** The district court of each county which is a judicial district by itself has no terms, and must be always open for the transaction of business, except on legal holidays and non-judicial days. Juries for the trial of causes must be called by the judge as often as the public business requires. In each district where two or more counties are united the judge thereof must fix the term of court in each county in his district, and there must be at least four terms a year in each county. Any order of the judge of such district fixing terms of court shall be filed in the office of the clerk of the district court in each county of his district, and shall remain in effect until further order of the judge; provided, that nothing in this section shall be construed to prevent the calling of a special term of court, with or without a jury, when in the opinion of the presiding judge the same is necessary. The district judge may adjourn a term of district court in one county to a future day certain, and in the meantime hold court in another county.

**History:** En. Sec. 38, C. Civ. Proc. 1895; amd. Sec. 1, p. 156, L. 1901; Sec. 6272, Rev. C. 1907; re-en. Sec. 8826, R. C. M. 1921, amd. Sec. 1, Ch. 144, L. 1959. Cal. C. Civ. Proc. Sec. 73.

#### **Amendment**

The 1959 amendment substituted "by the judge as often as the public business requires" for "on the first Monday of every alternate month, if the judge so directs, and oftener if the public business requires" at the end of the second sentence; deleted the words "which must be held at the county seat" which followed "county in his district" in the third sentence; and substituted the portion of the fourth sentence preceding the proviso for "The judge of such district court must, within ten days after the first day of December of each year, make an order which must designate the times at which the terms of court are to be held in each county in his district in the coming year, beginning with the first day of January following such order, and must cause such

order, or a copy thereof, to be filed in the office of the clerk of the district court in each county in his district, and such clerk must cause the same to be published in some newspaper printed in his county for three successive weeks immediately after the filing of such order, the costs of which shall be a county charge, and no change of time of holding the terms of court so fixed in any county must be made during the year."

#### **Terms—Effect on Grand Jury**

Although district court is always open and each term continues until the succeeding term, the terms as fixed by the court limit the existence of the grand jury, the beginning of each term constituting a "final adjournment" of the preceding term within the meaning of section 94-6314. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

#### **References**

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1024.



**93-316. (8827) Adjournments**—terms in districts of more than one county. Adjournments from day to day, or from time to time, are to be construed as recesses in the session or term, and shall not prevent the court from sitting at any time. In districts where two or more counties are united, court may be held, causes tried, with or without a jury, and business transacted in any and all of the counties of the district continuously and simultaneously, with or without recesses, and without regard to the beginning or ending of any of the terms in any of the counties of the district. The judge of such district may hold court in one county of such district, try causes, with or without a jury, and transact business, while at the same time court may be held, causes tried, with or without a jury, and business transacted in any other county of such district by the same judge or by any other district judge of the state, when requested or assigned thereto under any of the provisions of the code or statutes of Montana.

**History:** Ap. p. Sec. 39, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 184, L. 1907; Sec. 6273, Rev. C. 1907; re-en. Sec. 8827, R. C. M. 1921; amd. Sec. 2, Ch. 144, L. 1959.

#### Amendment

The 1959 amendment substituted the latter part of the second sentence, beginning with "any and all of the counties" for "any county from the beginning of the term to the beginning of the next term in the same county, notwithstanding the time or term fixed for holding said district court in another county in the same dis-

trict, to the same extent and effect, and with like power as if there were no other term of court held or fixed in such other county"; inserted the words "by the same judge or" in the latter part of the third sentence; and, at the end of the section, substituted "under any of the provisions of the code or statutes of Montana" for "as provided in section 93-310."

#### Repealing Clause

Section 3 of Ch. 144, Laws 1959 repealed all acts or parts of acts in conflict therewith.

### 93-318. (8829) Original jurisdiction.

#### Aggregation of Causes of Action

Held, that where there are several causes of action, each for less than the jurisdictional minimum for the district court, they may be prosecuted in the district court where their aggregate exceeds the jurisdictional minimum. *Stokke v. Graham*, 129 M 96, 281 P 2d 1025, 1026. See, however,

the concurring opinions, 129 M 96, 281 P 2d 1025, 1027.

#### References

Cited in *Benson v. Benson*, 121 M 439, 193 P 2d 827, 829; *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 765.

### 93-320. (8831) Process.

#### References

Cited or applied in *Fraser v. Clark*, 128 M 160, 273 P 2d 105, 114.

### 93-321. (8832) Terms and departments of court, etc.

#### Operation and Effect

Where a criminal case was assigned an odd number and under the rules in force under this section for the district court of the first judicial district, all civil and criminal cases bearing an odd number shall be assigned to department one of said court, it was not within the authority of the judge of department two to rule on a motion to suppress certain evidence and such proceedings under department two were void. *State ex rel. Magnuson*

*v. District Court*, 125 M 79, 231 P 2d 941, 942, 944.

Where judge of the second department assumed jurisdiction of a divorce suit, even though, under the rules, it was properly assignable to the first department, it was beyond the power of the judge of the first department to interfere in any way and proceedings wherein he set aside the divorce were null and void. *Deich v. Deich*, — M —, 323 P 2d 35, 40.

CHAPTER 5—GENERAL PROVISIONS RESPECTING THE POWERS,  
PROCEEDINGS AND HOLDING OF COURTS OF JUSTICE**93-502. (8845) Courts of record may make rules.****References**

Cited or applied in *State ex rel. Kennedy v. District Court*, 121 M 320, 194 P 2d 256, 259, 2 ALR 2d 1050; *State ex rel. Ben-*

*nett v. Bonner*, 123 M 414, 214 P 2d 747; *Sullivan v. Board of County Comrs.*, 124 M 364, 224 P 2d 135, 137.

**93-506. (8849) Days on which courts, etc., may be held.****Cross-Reference**

See note to sec. 93-507. *Miller v. Emerson*, 120 M 380, 186 P 2d 220.

**93-507. (8850) Nonjudicial days.****Failure to Object to Proceedings**

By failure to interpose timely objection or by consenting to proceed with the case

a party waives his right to object to proceedings conducted on a holiday. *Miller v. Emerson*, 120 M 380, 186 P 2d 220, 222.

## CHAPTER 9—DISQUALIFICATION OF JUDICIAL OFFICERS

**93-901. (8868) Cases in which judge may be disqualified, etc.****Cross-Reference**

Disqualification of judge in criminal proceedings, sec. 94-6913.

**Affidavit of Disqualification by Attorney**

When an attorney makes the affidavit of disqualification for bias he should make it on his own belief that his client cannot have a fair trial. *State ex rel. Coleman v. District Court*, 120 M 372, 186 P 2d 91, 93.

**Application of Section**

The provisions of subd. 4 of this section apply not only to ordinary law suits but to any "action, motion or proceeding" including proceedings for the establishment of an irrigation district. In *re Woodside-Florence Irr. Dist.*, 121 M 346, 194 P 2d 241, 256.

Where a judge in a probate proceeding is disqualified for imputed bias and prejudice under this section, the procedure for calling in another judge is under this section and not under section 91-2001 which has no application when the disqualification is for imputed bias and prejudice. *State ex rel. O'Sullivan v. District Court*, 127 M 32, 256 P 2d 1076, 1078.

**Authority of Called Judge**

A judge called in under the provisions of this section has the right under the provisions of section 93-1510 to draw additional jurors from jury box No. 3 to serve for the remainder of the term. *State v. Hay*, 120 M 573, 194 P 2d 232, 234.

**Authority of Disqualified Judge**

Upon the filing of the affidavit under subd. 4, the judge as to whom such dis-

qualification is averred is without authority to act further in the action, motion or proceeding except as the doing of purely ministerial act of arranging the calendar, regulating the order of business, calling in another judge, or transferring the case if transfer is proper. In *re Woodside-Florence Irr. Dist.*, 121 M 346, 194 P 2d 241, 244; *State ex rel. Sullivan v. District Court*, 122 M 1, 196 P 2d 452, 455.

Where the regularly presiding judge was disqualified and thereafter the second judge was disqualified, the regular presiding judge had the power to arrange the calendar and call in another judge. *Fuller v. Gibbs*, 122 M 177, 199 P 2d 851, 855.

**Change of Venue**

The district judge's compliance with this section is a condition precedent to obtaining a change of venue under section 93-2906. *State ex rel. Coleman v. District Court*, 120 M 372, 186 P 2d 91, 94.

**Disqualified Judge**

Where, during the course of a divorce proceeding a judge is disqualified and another judge assumes jurisdiction and commits the husband to jail for contempt, on a habeas corpus petition brought by the jailed husband the disqualified judge would not be authorized to act and a writ of prohibition will lie to prohibit such judge from proceeding further in the habeas corpus matter. *State v. District Court of Lewis and Clark County*, 130 M 73, 295 P 2d 233.

**Filing of Affidavit—Effect**

The mere filing of the affidavit ipso facto works the disqualification of the

judge against whom it is directed. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 244.

The mere filing of such affidavit ipso facto worked the disqualification of the judge against whom it was directed and except as is expressly provided in and allowed by the provisions of subdivision 4 of section 93-901, all orders in the cause made by the judge subsequent to the filing of the affidavit of disqualification against said judge are set aside, vacated and held for naught as null and void for want of jurisdiction. State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 849.

In habeas corpus proceedings relating to custody of children under divorce decree where judge assumed jurisdiction on October 28, father's affidavit for disqualification of judge was timely filed on October 31 depriving judge of jurisdiction in the case and judgment rendered by him thereafter was null and void. Mead v. Mead, — M —, 332 P 2d 499, 500.

#### Grounds for Disqualification

The fact that the judge had previously heard some criminal matter against the person who was acting as the agent of the defendant but who was not a party to the action himself was not a ground for disqualification. Gibbs v. Fuller, 120 M 516, 188 P 2d 426, 428.

#### Juvenile Delinquency Proceedings

From a reading of the statutes governing juvenile matters it is apparent that the legislative intent is that juvenile matters and proceedings are to be treated as civil and not as criminal proceedings and therefore the provisions of this section relating to the disqualification of judges applies to juvenile delinquency proceedings. State ex rel. Ostoj v. McClernan, 129 M 160, 284 P 2d 252, 254.

#### Mandamus

In action for mandamus to require district judge to call in another judge after affidavit of disqualification, judge cannot defend that the relatrix had not consented to the filing of the affidavit nor to the institution of the mandamus proceeding, where no attempt was made to raise such question under section 93-2121. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 93.

#### Number of Disqualifications

Where plaintiff had already disqualified two judges, he had no right to disqualify another judge for bias or prejudice. Gibbs v. Fuller, 120 M 516, 188 P 2d 426, 428.

Where judgment was obtained in action to quiet title, a subsequent proceeding for a writ of possession was a proceeding in the same action for the enforcement of

the judgment and therefore when two judges had been disqualified for bias or prejudice in the original proceeding an attempted disqualification of another judge by the defendant in the proceeding for writ of possession was of no effect. Fuller v. Gibbs, 122 M 177, 199 P 2d 851, 853.

#### Operation and Effect

This section and section 93-2906 are companion sections and must be construed together. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

The disqualification provided for in subd. 4 of this section stands upon the same level of importance as do those provided for in the preceding three subdivisions, except as to the time when the imputation may be made, and operates as effectively if invoked at the proper time. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 245.

#### Probate Proceedings

The word "proceeding" used in this section applies to a probate proceeding, thus permitting the disqualification of judges therein for imputed bias. State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 550.

A proceeding for the administration of an estate of a deceased person advances step by step through various stages of the proceeding and involves successive determinations in the course of such proceeding. The term "proceeding" is used in the Probate Code as a general designation of the entire judicial procedure employed whereby the law is administered upon the various subjects within the probate jurisdiction. State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 549, 550.

Where appellant filed a petition for letters of special administration and for probate of a will, which will was contested and during which appellant disqualified one judge for bias, and subsequent to the first petition, other parties filed a petition for letters of administration and appellant disqualified one judge for bias from hearing such petition, the appellant could not disqualify another judge from hearing the second petition since he had already disqualified the maximum of two judges as allowed by this section. State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546. (See, however, dissenting opinions of Justices Angstman and Anderson in 126 M 586, 256 P 2d 546 at pages 551 and 552 respectively.)

#### Proof of Alleged Bias and Prejudice Is Neither Required Nor Permitted

No inquiry as to the truth or falsity of the assertion of bias or prejudice can be permitted. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 93.



### Time for Calling in New Judge

While a district judge against whom an affidavit of disqualification for implied bias has been filed may take the time reasonably necessary to ascertain what other judge or judges may be available to preside in the case, he must proceed in good faith and without unreasonable delay to call another judge. *State ex rel. Coleman v. District Court*, 120 M 372, 186 P 2d 91, 93.

A judge against whom an affidavit of disqualification has been filed ought not to be permitted to delay for ten months the calling in of another judge to sit in the case simply because he has not sooner been able to find a district judge who will accept such jurisdiction in conformity with the rules of his court. *State ex rel. Coleman v. District Court*, 120 M 372, 186 P 2d 91, 94.

When district judge fails to call in another judge within a reasonable time after the filing of an affidavit of bias, mandamus is the proper remedy. *State ex rel. Coleman v. District Court*, 120 M 372, 186 P 2d 91, 94.

### Time for Disqualification

A judge who has been called in and assumed jurisdiction of a case could be disqualified to hear a separate proceeding therein, long after he had actually exercised jurisdiction on other matters in the case. *McLeod v. McLeod*, 126 M 32, 243 P 2d 321. (This case rests upon *Sullivan v. District Court*, 122 M 1, 196 P 2d 452 inasmuch as the *Sullivan* case by necessary implication overrules any contrary conclusion of *Stefonick v. District Court*, 117 M 86, 157 P 2d 96.)

Where the judge in issuing a writ of prohibition set November 21, 1950 as the return date and defendant filed a demurrer, which was disposed of and then an answer to which plaintiff filed a reply so that the trial actually took place on April 25, 1951 upon the issues framed by the pleadings, an affidavit of disqualification of the judge for imputed bias and prejudice filed April 13, 1951 was timely. The return date stated in the writ of prohibition (November 21, 1950) was not the "day appointed or fixed for the hearing or trial" within the meaning of this section. *Esterby v. Justice Court of Hellgate Township*, 127 M 1, 256 P 2d 544.

### Trial Date Fixed by Disqualified Judge

A judge though disqualified may still arrange the calendar and where hearing date was fixed by disqualified judge and subsequent notice that another judge had accepted jurisdiction was tantamount to a notice that the trial would proceed on the date fixed where no different date was arranged for. *Gibbs v. Fuller*, 120 M 516, 188 P 2d 426, 428.

### When Affidavit Must Be Filed

Where notice of intention to move for a new trial was to be based on the minutes of court and affidavits to be filed and no affidavits were filed and no additional time for filing was obtained from the court, the moving parties had only ten additional days after the ten day period for filing affidavits in which to have the motion heard, and an affidavit of disqualification of the judge, filed less than five days before the last day for hearing the motion, came too late. *State v. District Court*, 131 M 404, 310 P 2d 1055, 1056.

### Withdrawal of Affidavit

Upon the filing of the affidavit of disqualification, jurisdiction over the cause is lost, and disqualification cannot thereafter be waived by a withdrawal of the affidavit over the protests and objections of the opposite party. In *re Woodside-Florence Irr. Dist.*, 121 M 346, 194 P 2d 241, 245.

The fact that the supreme court was not in session at the time the affidavit of disqualification was filed is no ground for permitting the withdrawal of the affidavit and proceeding with the same judge over the objection of the opposite party. In *re Woodside-Florence Irr. Dist.*, 121 M 346, 194 P 2d 241, 256.

### Writ of Prohibition

Relators in application for a writ of prohibition, were not joined as parties defendant in the original proceeding, therefore were not served with notice of the date and place of hearing. They were joined as parties defendant by order of the court at the hearing; and immediately filed affidavit of disqualification required by this section. Upon the filing of the affidavit the judge against whom it was directed was without authority to further act in the proceedings. *State ex rel. Montana State University v. District Court*, 132 M 262, 317 P 2d 309, 314.

### References

Cited or applied in *State ex rel. Kennedy v. District Court*, 121 M 320, 194 P 2d 256, 263, 2 ALR 2d 1050; *State ex rel. Bennett v. Bonner*, 123 M 414, 214 P 2d 747; *State ex rel. Gilreath v. District Court*, 127 M 431, 265 P 2d 651, 653 (dissenting opinion); *State ex rel. Haegg v. District Court*, 130 M 530, 304 P 2d 1116, 1117.

Interest of judge in an official or representative capacity as disqualification. 10 ALR 2d 1307.

Power of successor judge taking office during term time to vacate, etc., judgment entered by his predecessor. 11 ALR 2d 1117.

## CHAPTER 11—MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

**93-1101. (8877) Subsequent applications for orders refused, etc.****References**

Cited in *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 848.

**93-1106. (8882) Means to carry jurisdiction into effect.****References**

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393, at 411 (dissenting opinion).

## CHAPTER 13—JURORS—QUALIFICATIONS AND EXEMPTIONS

**93-1301. (8890) Who competent to act as juror.****References**

Cited or applied in *State v. Deeds*, 130 M 503, 305 P 2d 321, 323.

**93-1305. (8894) Who may be excused.****References**

Cited or applied in *State v. Hay*, 120 M 573, 194 P 2d 232, 235.

Exclusion of attorneys from jury list in criminal cases. 32 ALR 2d 890.

## CHAPTER 14—JURORS—SELECTION AND RETURN

Section 93-1401. Jury lists, by whom and when to be made.

93-1402. Selection of persons qualified to serve as trial jurors.

93-1404. Duty of clerk—jury boxes.

**93-1401. (8896) Jury lists, by whom and when to be made.** The chairman of the county commissioners, or in his absence, any member of the board of county commissioners, the county treasurer, and the county assessor, or any two of such officers, of each county must meet at the county seat of each county at the office of the county clerk on the second Monday of December of each year, for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable. The first meeting of such officers for the purpose of making such list is within ten [10] days after this code takes effect.

**History:** En. Sec. 240, C. Civ. Proc. 1895; re-en. Sec. 6342, Rev. C. 1907; re-en. Sec. 8896, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1949; amd. Sec. 1, Ch. 86, L. 1959. Cal. C. Civ. Proc. Sec. 204.

**Repealing Clauses**

Section 2 of Ch. 133, Laws 1949 and Sec. 2 of Ch. 86, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**Amendments**

The 1949 amendment inserted the words "or in his absence, any member of the board of county commissioners" and the words "or any two of such officers."

The 1959 amendment substituted "December" for "January" in this section.

**Effective Date**

Section 3 of Ch. 133, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

**References**

Cited in *State v. Hay*, 120 M 573, 194 P 2d 232, 235; *State v. Deeds*, 130 M 503, 305 P 2d 321, 323.

**93-1402. (8897) Selection of persons qualified to serve as trial jurors.** At the meeting, specified in the last section, the officers present must select,

from the last assessment roll of the county, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in the last chapter. Each name so appearing on said list shall be assigned a number which shall be placed opposite the name on the jury list and shall be considered the number of the juror opposite whose name it appears. Said numbers shall be consecutive from "1" to the total number of jurors.

**History:** En. Sec. 241, C. Civ. Proc. 1895; re-en. Sec. 6343, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1919; re-en. Sec. 8897, R. C. M. 1921; amd. Sec. 1, Ch. 168, L. 1957.

#### References

Cited in *State v. Hay*, 120 M 573, 194 P 2d 232, 235; *State v. Deeds*, 130 M 503, 305 P 2d 321, 323.

#### Amendment

The 1957 amendment added the second and third sentences.

### 93-1403. (8898) Lists delivered to clerk.

#### References

Cited in *State v. Hay*, 120 M 573, 194 P 2d 232, 235.

**93-1404. (8899) Duty of clerk—jury boxes.** The clerk shall prepare and keep a jury box and contents as follows: The number of each juror shall be written, typed or stamped on paper or other suitable material, and enclosed in separate black capsules, identical in all respects, and placed in a box of ample size to permit said capsules to be thoroughly mixed, and which said box shall be kept for that purpose and shall be known as, and plainly marked, "jury box No. 1." Said capsules may be used as often as necessary; provided, however, no capsule shall be used which is in any manner whatsoever defaced or disfigured, or so marked that it may be recognized or distinguished from the other capsules in said jury box No. 1. There shall be so enclosed in said box one number, and only one number, corresponding to the name of each juror on the jury list.

**History:** En. Sec. 243, C. Civ. Proc. 1895; re-en. Sec. 6345, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1919; re-en. Sec. 8899, R. C. M. 1921; amd. Sec. 2, Ch. 168, L. 1957. Cal. C. Civ. Proc. Sec. 209.

#### Amendment

The 1957 amendment substituted the words "The clerk shall prepare and keep a jury box and contents as follows: The number of each juror shall be written, typed or stamped on paper or other suitable material, and enclosed in separate black capsules, identical in all respects, and placed" for the words "Immediately after the list has been delivered to him,

the clerk must prepare suitable ballots, by writing the name of each person so selected, as contained in the list, with his place of residence and other additions, on a separate piece of paper. The ballots must be uniform, as nearly as may be, in appearance, and each ballot must thereafter be inserted in a black capsule, and when all the said ballots have been so inserted, the clerk must deposit them" and added the third sentence.

#### References

Cited in *State v. Hay*, 120 M 573, 194 P 2d 232, 235; *State v. Porter*, 125 M 503, 242 P 2d 984, 986; *State v. Deeds*, 130 M 503, 305 P 2d 321, 325.

### 93-1405. (8900) Repealed.

#### Repeal

This section (Sec. 244, C. Civ. Proc. 1895), relating to the ballot box and re-

maining ballots, was repealed by Sec. 10, Ch. 168, Laws 1957, effective January 1, 1958.

### 93-1406. (8901) Term of service of jurors.

#### Cross-Reference

See note to sec. 93-1504. *State v. Allison*, 122 M 120, 199 P 2d 279.

#### References

Cited in *State ex rel. Adami v. Lewis and Clark County*, 124 M 282, 220 P 2d 1052, 1055.



# CHAPTER 15—JURORS—DRAWING AND SUMMONING FOR COURTS OF RECORD

- Section 93-1501. Summoning of trial jury.  
 93-1502. District judge to draw jury.  
 93-1503. Drawing—how conducted.  
 93-1504. Jury box No. 2.  
 93-1505. Jurors—when to be drawn from jury box No. 2.  
 93-1506. Jury box No. 3.  
 93-1509. Sheriff to summon jurors, how.  
 93-1510. Jurors drawn from jury box No. 3, when.  
 93-1511. Summoning jurors to complete a panel.

**93-1501. (8902) Summoning of trial jury.** At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than six (6) months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases, and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must specify the number of jurors to be drawn, and the time at which the jurors are required to attend, which time may be at the same term in which the jurors are drawn, or at the next succeeding term, in the discretion of the court. And the court may direct that such causes, either criminal or civil, in which a jury may be required, or in which a jury may have been demanded, be continued and fixed for trial when a jury shall be in attendance.

**History:** En. Sec. 260, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 7, L. 1907; Sec. 6348, Rev. C. 1907; re-en. Sec. 8902, R. C. M. 1921; amd. Sec. 1, Ch. 62, L. 1949. Cal. C. Civ. Proc. Sec. 214.

## Amendment

The 1949 amendment inserted the first part of this section reading "At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than six (6) months and the plaintiff or defendant in such case has requested a jury trial or" and substituted the word "must" for "may" between the words "the court" and "make an order directing a trial jury."

**93-1502. (8903) District judge to draw jury.** Immediately upon the order mentioned in the preceding section having been made the district judge shall in the presence of the clerk of the court proceed to draw the jurors by number from jury box No. 1.

**History:** En. Sec. 261, C. Civ. Proc. 1895; re-en. Sec. 6349, Rev. C. 1907; re-en. Sec. 8903, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1937; amd. Sec. 1, Ch. 3, L. 1939; amd. Sec. 3, Ch. 168, L. 1957. Cal. C. Civ. Proc. Sec. 215.

## Repealing Clauses

Section 2 of Ch. 62, L. 1949 repealed Chapter 277 of the Montana Session Laws of 1947 (secs. 93-4912 to 93-4915, Revised Codes 1947).

Section 3 of Ch. 62, L. 1949 repealed all acts and parts of acts in conflict therewith.

## Cross-Reference

See note to sec. 93-1510. *State v. Hay*, 120 M 573, 194 P 2d 232, 235.

Effect of juror's false or erroneous answer on voir dire in personal injury or death action as to previous claims of action for damages by himself or his family. 38 ALR 2d 624.

## Amendment

The 1957 amendment inserted the words "by number."

## References

Cited or applied in *State v. Porter*, 125 M 503, 242 P 2d 984, 986; *State v. Deeds*, 130 M 503, 305 P 2d 321, 325.

**93-1503. (8904) Drawing—how conducted.** 1. The clerk must place said box on a rod so that the same may readily revolve and said box must

be revolved a sufficient number of times so as to insure that the capsules in said box shall become thoroughly mixed, and thereafter the judge must draw from said box one at a time, as many of said capsules containing the numbers of jurors as are ordered by the court.

2. A minute of the drawing shall be entered in the minutes of the court, which must show the names of the jurors corresponding to the numbers so drawn from said jury box.

3. If the name of any person so drawn is deceased or insane, or who may have permanently removed from the county, and the fact shall be made to appear to the satisfaction of the court, the name of such person shall be omitted from the list, and another juror drawn in his place, and the fact shall be entered upon the minutes of the court. The same proceeding shall be had as often as may be necessary, until the number of jurors required shall have been drawn. After the drawing shall have been completed, the clerk shall make a copy of the list of names of the persons so drawn, and certify the same. In his certificate he shall state the date of the order and of the drawing, and the number of the jurors drawn, and the time when and the place where such jurors shall be required to appear. Such certificate and list shall be delivered to the sheriff for service.

**History:** En. Sec. 262, C. Civ. Proc. 1895; re-en. Sec. 6350, Rev. C. 1907; amd. Sec. 2, Ch. 35, L. 1919; re-en. Sec. 8904, R. C. M. 1921; amd. Sec. 1, Ch. 148, L. 1933; amd. Sec. 2, Ch. 151, L. 1937; amd. Sec. 2, Ch. 3, L. 1939; amd. Sec. 4, Ch. 168, L. 1957. Cal. C. Civ. Proc. Sec. 219.

#### Amendment

The 1957 amendment in subd. 1 substituted the word "numbers" for the word "names"; in subd. 2 substituted "names of the jurors corresponding to the numbers" for "name on each slip of paper" and in

subd. 3 substituted the present first sentence for one which read "If the name of any person is drawn from said box who is deceased or insane, or who may have permanently removed from the county, or who is exempt from jury service, and the fact shall be made to appear to the satisfaction of the court, the name of such person shall be omitted from the list, and the slip of paper having such name on it shall be destroyed and another juror drawn in his place, and the fact shall be entered upon the minutes of the court."

**93-1504. (8905) Jury box No. 2.** After the adjournment of the term or session at which trial jurors have been returned, as prescribed in the last section, the clerk must deposit the capsules containing the numbers of the jurors who attended and served, in another box kept by him, known as and marked "jury box No. 2." The capsules containing the ballots with the numbers of those who did not appear and serve must be returned to the box from which they were taken.

**History:** En. Sec. 263, C. Civ. Proc. 1895; re-en. Sec. 6351, Rev. C. 1907; amd. Sec. 3, Ch. 35, L. 1919; re-en. Sec. 8905, R. C. M. 1921; amd. Sec. 5, Ch. 168, L. 1957.

#### Amendment

The 1957 amendment in the first sentence substituted the words "numbers of the jurors" for the words "ballots with the names of those"; in the second sentence substituted "numbers" for "names" and deleted the words "which have not been

destroyed as prescribed in the preceding section" which appeared between the words "serve" and "must."

#### Jurors Called But Not Serving

Where a panel of 89 persons was called and sworn as jurors for the term but were discharged before serving at any trial, such jurors had not served within the meaning of this section and it was proper to return such names to jury box No. 1 and not jury box No. 2. *State v. Allison*, 122 M 120, 199 P 2d 279, 284.

**93-1505. (8906) Jurors—when to be drawn from jury box No. 2.** If, at the time of drawing trial jurors for a term or session, there is not a sufficient number of capsules containing the numbers of jurors thereon remaining in box No. 1, the judge presiding, after drawing all the capsules containing therein the numbers of the jurors, must draw the necessary number from box No. 2, containing the numbers of those jurors who have before served, as prescribed in the last section; and must continue to draw from that box until new lists of jurors are provided.

**History:** En. Sec. 264, C. Civ. Proc. 1895; re-en. Sec. 6352, Rev. C. 1907; amd. Sec. 4, Ch. 35, L. 1919; re-en. Sec. 8906, R. C. M. 1921; amd. Sec. 2, Ch. 148, L. 1933; amd. Sec. 6, Ch. 168, L. 1957.

#### **Amendment**

The 1957 amendment substituted “the

numbers of jurors” “the numbers of the jurors” and “the numbers of those jurors” for “ballots with the names of jurors” “ballots with the names of jurors thereon” and “the names of those jurors” respectively.

**93-1506. (8907) Jury box No. 3.** The clerk must keep, in addition to the two boxes specified in the last two sections, a third box, known as and marked “jury box No. 3,” in which he must deposit capsules containing duplicate numbers of all persons selected and returned as trial jurors, who reside in the city or town where a trial term or session of a court of record is held, pursuant to law.

**History:** En. Sec. 265, C. Civ. Proc. 1895; re-en. Sec. 6353, Rev. C. 1907; amd. Sec. 5, Ch. 35, L. 1919; re-en. Sec. 8907, R. C. M. 1921; amd. Sec. 7, Ch. 168, L. 1957.

#### **Amendment**

The 1957 amendment substituted the

word “numbers” for the words “ballots, with the names and the proper additions.”

#### **References**

Cited in State v. Hay, 120 M 573, 194 P 2d 232, 235; State v. Porter, 125 M 503, 242 P 2d 984, 986.

### **93-1507. (8908) Repealed.**

#### **Repeal**

This section (Sec. 266, C. Civ. Proc. 1895; amd. Sec. 6, Ch. 35, L. 1919), relat-

ing to the deposit of ballots in box No. 3, was repealed by Sec. 10, Ch. 168, Laws 1957, effective January 1, 1958.

**93-1509. (8910) Sheriff to summon jurors, how.** The sheriff, as soon as he receives a list or lists of jurors drawn, shall summon the persons named therein to attend the court at the time mentioned in the order, by a written notice by certified mail to that effect addressed to them to the postoffice address named in the jury list and deposited in the postoffice with the postage thereon prepaid, except in cases where the district judge expressly directs that such service shall be made by giving personal notice, and shall return the list to the court at the opening of the regular session thereof, or at such session or time as the jurors may be ordered to attend, specifying the names of those who are summoned, and the manner in which each person was notified.

**History:** En. Sec. 280, C. Civ. Proc. 1895; re-en. Sec. 6356, Rev. C. 1907; amd. Sec. 1, Ch. 9, L. 1911; re-en. Sec. 8910, R. C. M. 1921; amd. Sec. 1, Ch. 88, L. 1959. Cal. C. Civ. Proc. Sec. 225.

#### **Amendment**

The 1959 amendment substituted the

words “certified mail” for “registered mail” in this section.

#### **Repealing Clause**

Section 2 of Ch. 88, Laws 1959 repealed all acts and parts of acts in conflict therewith.



**93-1510. (8911) Jurors drawn from jury box No. 3, when.** If a sufficient number of trial jurors, duly drawn and notified, do not attend or cannot be obtained in the opinion of the court, without great delay or expense to form a jury, the court may, in its discretion, direct the clerk to draw from box No. 3, in the presence of the court, the numbers corresponding to the names of as many jurors on the jury list as the court deems sufficient for that purpose.

**History:** En. Sec. 281, C. Civ. Proc. 1895; re-en. Sec. 6357, Rev. C. 1907; re-en. Sec. 8911, R. C. M. 1921; amd. Sec. 8, Ch. 168, L. 1957. Cal. C. Civ. Proc. Sec. 226.

#### Amendment

The 1957 amendment substituted the words "numbers corresponding to the names of as many jurors on the jury list" for the words "names of as many persons."

#### Called Judge—Authority

A judge called in under the provisions of section 93-901 has the authority to draw additional jurors from jury box No. 3 to serve for the remainder of the term. *State v. Hay*, 120 M 573, 194 P 2d 232, 234.

#### Operation and Effect

It was error for the trial judge to deny the defendant's motion to obtain additional jurors from jury box No. 1, when the inadequacy of the panel jury was called to the attention of the court six days before the case was to be tried, and

at the trial the judge then called additional jurors from box No. 3. Defendant believed that a "Maine Street" jury would be antagonistic towards him and he made a timely request to have the venire augmented by additional jurors drawn from the entire county. Failure to provide an adequate panel was an abuse of discretion and amounted to the systematic and calculated exclusion of persons residing throughout the county at large other than those living in the city of Helena. *State v. Porter*, 125 M 503, 242 P 2d 984, 986.

#### Right to Draw From Box No. 3

Where seventy jurors were drawn from jury box No. 1, there was no abuse of discretion in not drawing more and no constitutional rights were violated by drawing from jury box No. 3 after the original panel was exhausted. *State v. Hay*, 120 M 573, 194 P 2d 232, 235.

#### References

Cited in *State v. Allison*, 122 M 120, 199 P 2d 279, 283.

**93-1511. (8912) Summoning jurors to complete a panel.** The sheriff must forthwith notify each person whose number has been drawn and make a return as prescribed in section 93-1509.

**History:** En. Sec. 282, C. Civ. Proc. 1895; re-en. Sec. 6358, Rev. C. 1907; re-en. Sec. 8912, R. C. M. 1921; amd. Sec. 9, Ch. 168, L. 1957.

#### Amendment

The 1957 amendment substituted the words "whose number has been drawn" for the words "so drawn."

#### Repealing Clause

Section 10 of Ch. 168, Laws 1957 read "That sections 93-1405 and 93-1507, and all acts and parts of acts in conflict herewith are hereby repealed."

#### Effective Date

Section 11 of Ch. 168, Laws 1957 provided the act should be in full force and effect from and after January 1, 1958.

### CHAPTER 19—COURT STENOGRAPHERS

Section 93-1906. Salary and expenses of stenographer—apportionment.

**93-1904. (8931) To furnish copies to parties, etc.**

#### Application of Section

This section governs only the furnishing of copies of the transcript of record for use in the trial court and has nothing to

do with appeals to the Supreme Court. *Sullivan v. Board of County Comrs.*, 124 M 364, 224 P 2d 135, 136.

**93-1906. (8933) Salary and expenses of stenographer—apportionment.** Every stenographer appointed under the provisions of this chapter receives an annual salary of five thousand four hundred (\$5,400.00) dollars and

no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The stenographer is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary.

**History:** En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1927; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955. Cal. C. Civ. Proc. Secs. 271 and 274.

#### Amendments

The 1951 amendment raised the salary of the stenographer from \$3,600 to \$4,200.

The 1953 amendment raised the salary

of the stenographer from \$4,200 to \$4,800 and added the proviso in the middle of the first sentence.

The 1955 amendment raised the salary of the stenographer from \$4,800 to \$5,400 and substituted the word "thereafter" for "after" near the end of the first sentence.

#### Repealing Clauses

Section 2 of Ch. 49, Laws 1951; Sec. 2 of Ch. 125, Laws 1953 and Sec. 2 of Ch. 76, Laws 1955 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 20—ATTORNEYS—QUALIFICATIONS—ADMISSION— LICENSE AND DISBARMENT

#### 93-2002. (8937) Qualifications, examination and admission.

##### Operation and Effect

Where an applicant took and failed the bar examination three times, the supreme court will not allow a petition by the applicant to admit the applicant on motion and without examination for this

would set at naught the labors and recommendations of the board of law examiners and nullify the governing statutes and rules of the court. Petition of Bergen, 125 M 607, 233 P 2d 399.

### CHAPTER 21—ATTORNEYS—POWERS—DUTIES— LIABILITIES AND COMPENSATION

#### 93-2104. (8977) Death or removal of attorney.

##### Operation and Effect

Where there is a failure to show that the procedure has been followed when an attorney for a party litigant dies, a motion to dismiss the appeal will be denied. In re Estate of Burton L. Knowles, 130 M 637, 304 P 2d 923.

When one attorney dies, appointment of a successor must be demanded. Hand v. Hand, 131 M 571, 312 P 2d 990, 993.

Where a divorced wife's attorney died and defendant husband did not demand the appointment of a successor, the special appearance by an attorney to quash an order that the wife show cause why the divorce decree should not be modified did not waive the defect that there was no statutory substitution of an attorney. Hand v. Hand, 131 M 571, 312 P 2d 990, 993.

**93-2120. (8993) Lien for compensation.****Extent of Lien**

Where, in second trial of conversion action, plaintiff obtained judgment against defendant, the attorney's lien on the judgment covered only the amount which would be realized on the judgment after costs accruing to defendant on appeal from first trial were deducted. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 635.

**Notice**

Under this section there is no need to file a notice of lien, the commencement of an action or the service of an answer containing a counterclaim being sufficient notice of the lien of the attorney. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 634.

**Priority of Lien**

While an attorney's lien is subordinate to the rights of the adverse party to offset judgments in the same actions or in actions based on the same actions or in actions based on the same transactions, it is nevertheless superior to any right to offset judgments obtained in wholly independent actions. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 634.

An attorney's lien for unpaid compensation is not superior to the adverse party's claim for costs accruing as a part of the litigation on the cause of action. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 635.

**93-2121. (8994) Attorney may be compelled to show his authority.****References**

Cited or applied in *State ex rel. Coleman v. District Court*, 120 M 372, 186 P 2d 91, 93.

## CHAPTER 22—JUDICIAL REMEDIES, ACTIONS AND SPECIAL PROCEEDINGS

**93-2201. (8995) Judicial remedies defined.****References**

Cited or applied in *State ex rel. Reid*

*v. District Court*, 126 M 586, 256 P 2d 546, 549.

**93-2202. (8996) Division of judicial remedies.****References**

Cited or applied in *State ex rel. Reid v.*

*District Court*, 126 M 586, 256 P 2d 546, 549.

**93-2203. (8997) Action defined.****References**

Cited or applied in *State ex rel. Reid v.*

*District Court*, 126 M 586, 256 P 2d 546, 549.

**93-2204. (8998) Special proceeding defined.****Probate Proceedings**

The administration of an estate of a deceased person is neither an action at

law nor a suit in equity but it is a special proceeding. *State ex rel. Reid v. District Court*, 126 M 586, 256 P 2d 546, 549.

## CHAPTER 23—FORM OF CIVIL ACTION

**93-2301. (9008) One form of civil action only.****References**

Cited or applied in *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 999.

**93-2303. (9010) Special issues not made by pleadings—how tried.****References**

Cited or applied in *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 999.



## CHAPTER 24—TIME OF COMMENCING ACTIONS GENERALLY

**93-2401. (9011) Commencement of civil actions.**

Inclusion or exclusion of first and last day for purposes of statute of limitations. 20 ALR 2d 1249. Estoppel to rely on statute of limitations. 24 ALR 2d 1413.

## CHAPTER 25—LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY

- Section 93-2502. When actions cannot be brought by grantee from the state.
- 93-2504. Seizin within five years—when necessary in actions for real property—action for dower.
- 93-2505. Such seizin, when necessary in action or defense arising out of title to or rents of real property.
- 93-2506. Entry on real estate.
- 93-2507. Possession—when presumed—occupation deemed under legal title, unless adverse.
- 93-2508. Occupation under written instrument or judgment—when deemed adverse.
- 93-2512. Relation of landlord and tenant as affecting adverse possession.
- 93-2513. Occupancy and payment of taxes necessary to prove adverse possession.
- 93-2515. Certain disabilities excluded from time to commence actions.
- 93-2516. Application of chapter to lands sold and conveyed by state.

**93-2502. (9013) When actions cannot be brought by grantee from the state.** No action can be brought for or in respect to real property by any person claiming under letters patent or grants from this state, unless the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the property in question within ten (10) years before the commencement of the action. In any such action the state of Montana may be made a party defendant, and shall have only the defenses thereto as are available to other parties defendant to the action; provided that no judgment in any such action shall include damages, attorney fees or court costs against the state of Montana.

**History:** En. Sec. 481, C. Civ. Proc. 1895; re-en. Sec. 6430, Rev. C. 1907; re-en. Sec. 9013, R. C. M. 1921; amd. Sec. 1, Ch. 196, L. 1955. Cal. C. Civ. Proc. Sec. 316.

"unless the same might have been commenced by the state as herein specified, in case such patent had not been issued or grant made."

**Amendment**

The 1955 amendment substituted all that part of the section beginning with the words "unless the plaintiff \* \* \*" for

**Repealing Clause**

Section 2 of Ch. 196, Laws 1955 repealed all acts and parts of acts in conflict therewith.

**93-2504. (9015) Seizin within five years—when necessary in actions for real property—action for dower.** No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five [5] years before the commencement of the action. No action for the recovery of dower can be maintained by a widow unless the action is commenced within ten [10] years after the death of her husband.

**History:** Ap. p. Sec. 29, p. 45, L. 1877; re-en. Sec. 29, 1st Div. Rev. Stat. 1879; re-en. Sec. 29, 1st Div. Comp. Stat. 1887; amd. Sec. 483, C. Civ. Proc. 1895; re-en. Sec. 6432, Rev. C. 1907; re-en. Sec. 9015,

R. C. M. 1921; amd. Sec. 1, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 318.

**Amendment**

The 1953 amendment substituted "five

years" for "ten years" the first time it appeared in this section.

#### Application for Tax Deed

The affidavit of service of notice of application for tax deed must recite whether the premises involved were occupied or unoccupied and if occupied by whom. Failure to so recite is a fatal defect. *Davis v. Steingruber*, 131 M 468, 311 P 2d 784, 786.

#### Ditch Right

Title by prescription to a ditch conveying water may be obtained by use thereof whenever water is needed. *Te Selle v. Storey*, 133 M 1, 319 P 2d 218, 220.

Where deed to defendant after describing property by legal subdivisions contained clause: "Together with all the tenements, hereditaments and appurtenances, water rights and water ditches to the same belonging," if defendant's predecessor used the ditch for more than ten years there was title in him by prescription which passed to defendant by deed and it was of no consequence that the deed did not specifically mention the ditch right as an appurtenance. *Te Selle v. Storey*, 133 M 1, 319 P 2d 218, 220.

#### Operation and Effect

Where plaintiff's complaint alleges that "plaintiff is now the owner, entitled to possession," there is a presumption under section 93-2507 that the person establishing a legal title to the property is in possession thereof within the time required by law, and it is up to the other party to overcome the presumption with proof. *Warren v. Warren*, 127 M 259, 261 P 2d 364, 365.

Where party was the owner of the surface rights of land but there was a reserved right of entry for mining pur-

poses in another person, the owner of the surface rights could not acquire any right by adverse possession unless he could show possession of the mine independently of the possession of the surface of the land for grazing or other purposes. *Lehfeldt v. Adams*, 130 M 395, 303 P 2d 934, 937.

In an action to quiet title, the fact that a county, which was named party defendant several months after the action was commenced, may have been entitled to assert the statute of limitations as a defense, did not make the same defense available to the plaintiff against a cross-complaint filed before the lapse of the 10-year period following the plaintiff's acquisition of a tax title. *Marek v. Smith*, 132 M 73, 314 P 2d 864, 865.

Where new parties are brought into a case, and it appears that between the commencement of the suit and the time when they are brought in, the period of limitations had expired, the new parties may plead the statute of limitations for themselves, but the plea is not available to the original defendants. *Marek v. Smith*, 132 M 73, 314 P 2d 864, 866.

This section applies to a case where a fence was erected prior to the government survey and with intent to claim all within the fence even though a subsequent patent based on the survey lines does not include all to the fence. *Thibault v. Flynn*, 133 M 461, 325 P 2d 914.

#### References

Cited or applied in *Laas v. All Persons*, 121 M 43, 189 P 2d 670, 671; *Barcus v. Galbreath*, 122 M 537, 207 P 2d 559, 561; *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 497; *Bond v. Birk*, 126 M 250, 247 P 2d 199, 200; *Flathead Lumber Corp. v. Everett*, 127 M 291, 263 P 2d 376, 377.

**93-2505. (9016) Such seizin, when necessary in action or defense arising out of title to or rents of real property.** No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within five [5] years before the commencement of the act in respect to which such action is prosecuted or defense made.

**History:** Ap. p. Sec. 30, p. 45, L. 1877; re-en. Sec. 30, 1st Div. Rev. Stat. 1879; re-en. Sec. 30, 1st Div. Comp. Stat. 1887; amd. Sec. 484, C. Civ. Proc. 1895; re-en. Sec. 6433, Rev. C. 1907; re-en. Sec. 9016, R. C. M. 1921; amd. Sec. 2, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 319.

#### Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

#### Operation and Effect

The bringing of an action against one in adverse possession disputing his title arrests the running of the statute. *Flathead Lumber Corp. v. Everett*, 127 M 291, 263 P 2d 376, 378.

Where party was the owner of the surface rights of land but there was a reserved right of entry for mining purposes in another person, the owner of the sur-

face rights could not acquire any rights by adverse possession unless he could show possession of the mine independently of the possession of the surface of the land for grazing or other purposes. *Lehfeldt v. Adams*, 130 M 395, 303 P 2d 934, 937.

### Pleading

Since a person in adverse possession can acquire no new right as against the plaintiffs by the mere fact that they remain in possession during the pendency of the action it follows that a pleading of adverse possession by defendants for ten years is insufficient to constitute a defense unless it is alleged that the ten years were before the commencement of the action, and the trial court erred in sustaining a motion for judgment on the pleadings and in entering judgment thereon for defendants. *Flathead Lumber*

*Corp. v. Everett*, 127 M 291, 263 P 2d 376, 378.

### Possession By Constructive Trustee

Where daughter deeded property to mother to be held in trust for her and later mother deeded property to another daughter with the understanding that it was to be held for the benefit of the first daughter, the possession of the mother and the second daughter was the possession of and for the first daughter and therefore an action by the first daughter to recover the property was not barred. *Opp v. Boggs*, 121 M 131, 193 P 2d 379, 384.

### References

Cited or applied in *Laas v. All Persons*, 121 M 43, 189 P 2d 670, 671; *Bond v. Birk*, 126 M 250, 247 P 2d 199, 200; *Te Selle v. Storey*, 133 M 1, 319 P 2d 218, 219.

**93-2506. (9017) Entry on real estate.** No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one [1] year after making such entry, and within five [5] years from the time when the right to make it descended or accrued.

**History:** Ap. p. Sec. 3, p. 466, *Bannack Stat.*; re-en. Sec. 3, p. 515, *Cod. Stat.* 1871; amd. Sec. 31, p. 46, *L. 1877*; re-en. Sec. 31, 1st Div. Rev. Stat. 1879; re-en. Sec. 31, 1st Div. Comp. Stat. 1887; amd. Sec. 485, *C. Civ. Proc.* 1895; re-en. Sec. 6434, *Rev. C.* 1907; re-en. Sec. 9017, *R.*

*C. M.* 1921; amd. Sec. 3, Ch. 224, *L.* 1953. *Cal. C. Civ. Proc. Sec.* 320.

### Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

**93-2507. (9018) Possession—when presumed—occupation deemed under legal title, unless adverse.** In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title for five [5] years before the commencement of the action.

**History:** En. Sec. 4, p. 466, *Bannack Stat.*; re-en. Sec. 4, p. 515, *Cod. Stat.* 1871; amd. Sec. 32, p. 46, *L. 1877*; re-en. Sec. 32, 1st Div. Rev. Stat. 1879; re-en. Sec. 32, 1st Div. Comp. Stat. 1887; amd. Sec. 486, *C. Civ. Proc.* 1895; re-en. Sec. 6435, *Rev. C.* 1907; re-en. Sec. 9018, *R.* *C. M.* 1921; amd. Sec. 4, Ch. 224, *L.* 1953. *Cal. C. Civ. Proc. Sec.* 321.

### Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

### Burden of Proof

In action by mortgagor to quiet title to grazing lands burden of proving adverse possession was upon the plaintiff. *Bell v. Gussenhoven*, 132 M 346, 318 P 2d 251, 253.

### Possession Under Contract for Deed

Possession under contract for deed was subordinate to title of owner. *Hinton v. Staunton*, 124 M 534, 228 P 2d 461, 463.

### Presumption of Possession

Upon a motion to set aside a default judgment wherein the person in his affidavit of merits alleged that he was the record owner of the real estate he set up a prima facie defense to the original action because of the presumption of this section that the person who has legal title is in possession. *Holen v. Phelps*, 131 M 146, 308 P 2d 624, 627.

### References

Cited or applied in *Lowery v. Garfield County*, 122 M 571, 208 P 2d 478, 486; *Kenney v. Bridges*, 123 M 95, 208 P 2d 475, 478; *Warren v. Warren*, 127 M 259,



261 P 2d 364, 365; Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 377.

Acquisition of title to mines or minerals by adverse possession. 35 ALR 2d 124.

Good faith as affecting acquisition of title to mines or minerals by adverse possession. 35 ALR 2d 138.

**93-2508. (9019) Occupation under written instrument or judgment—when deemed adverse.** When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property, under such claim, for five [5] years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one [1] lot is not deemed a possession of any other lot of the same tract.

**History:** En. Sec. 33, p. 46, L. 1877; re-en. Sec. 33, 1st Div. Rev. Stat. 1879; re-en. Sec. 33, 1st Div. Comp. Stat. 1887; amd. Sec. 487, C. Civ. Proc. 1895; re-en. Sec. 6436, Rev. C. 1907; re-en. Sec. 9019, R. C. M. 1921; amd. Sec. 5, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 322.

#### Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

#### Color of Title

A tax deed, though void, is ample as color of title so as to sustain the claim of adverse possession. *Hentzy v. Mandan Loan & Investment Co.*, 129 M 324, 286 P 2d 325, 327.

Color of title may be evidenced by a contract for the sale of land. An instrument which purports to convey the land or the right to its possession is sufficient color of title as a basis for adverse possession if the claim is made in good faith. *Hentzy v. Mandan Loan & Investment Co.*, 129 M 324, 286 P 2d 325, 327.

Where county leased property, which it obtained by tax deed in 1930, to persons in 1940, and entered into a contract for sale

Possession of mortgagor or successor in interest as adverse to purchaser at foreclosure sale. 38 ALR 2d 348.

Void tax deed, tax sale certificate, and the like, as constituting color of title. 38 ALR 2d 986.

Grantor's possession as adverse possession against grantee. 39 ALR 2d 353.

in 1941, the occupant had "color of title" under the tax deeds and contracts for deeds to support adverse possession even though such tax deeds to the county were void for failure to comply with all of the requirements. *Long v. Pawlowski*, 131 M 91, 307 P 2d 1079, 1081.

#### Tacking Possession

A wife may tack her possession on to that of her husband prior to his death and it is not necessary that the relationship of husband and wife be established by probate proceedings before this can be done where the relationship is admitted by the pleadings. *Barcus v. Galbreath*, 122 M 537, 207 P 2d 559, 564.

#### References

Cited or applied in *Pritchard Petroleum Co. v. Farmers' Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 61; *Laas v. All Persons*, 121 M 43, 189 P 2d 670, 672.

Adverse possession: sufficiency, as regards continuity, of seasonal possession other than for agricultural or logging purposes. 24 ALR 2d 632.

### 93-2509. (9020) What constitutes adverse possession, etc.

#### Application of Section

This section was inapplicable to claim of adverse title by plaintiff to grazing lands who contended that he had color of title by virtue of his patent, where proof disclosed that mortgage foreclosure proceedings divested him of title, leaving him with privilege of redemption which was not exercised. Upon the issuance of sheriff's certificate of sale, title vested in pur-

chaser. *Bell v. Gussenhoven*, 132 M 346, 318 P 2d 251, 253.

#### Facts Showing Adverse Possession

Where plaintiffs inclosed the land with barbed wire fence, cultivated the land, executed an oil and gas lease on the land, and mortgaged the land, there were sufficient facts to show adverse possession. *Laas v. All Persons*, 121 M 43, 189 P 2d 670, 674.

Where defendant paid taxes on land for more than ten years [since amended], staked out the land in lots and leased it at various times for different purposes, and the land was in defendant's name in the tax records, evidence was sufficient to show adverse possession. *Kenney v. Bridges*, 123 M 95, 208 P 2d 475.

### 93-2510. (9021) Premises actually occupied under the claim, etc.

#### Operation and Effect

Protection of the land by a substantial enclosure with intent to claim to the enclosure is sufficient for adverse possession

#### References

Cited or applied in *Hentzy v. Mandan Loan & Investment Co.*, 129 M 324, 286 P 2d 325, 326; *Schumacher v. Cole*, 131 M 166, 309 P 2d 311, 313.

under this section even though not based on a written instrument. *Thibault v. Flynn*, 133 M 461, 325 P 2d 914.

### 93-2511. (9022) What constitutes adverse possession under claim, etc.

#### Application of Section

This section was inapplicable where plaintiff did not claim grazing land on any title except adverse usage and there was no testimony in the record that the land had been protected by a substantial enclosure, nor had it been cultivated or improved. *Bell v. Gussenhoven*, 132 M 346, 318 P 2d 251, 253.

#### Operation and Effect

Protection of the land by a substantial enclosure with intent to claim to the enclosure is sufficient for adverse possession under this section even though not based on a written instrument. *Thibault v. Flynn*, 133 M 461, 325 P 2d 914.

#### References

Cited or applied in *Schumacher v. Cole*, 131 M 166, 309 P 2d 311, 313.

**93-2512. (9023) Relation of landlord and tenant as affecting adverse possession.** When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five [5] years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five [5] years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods prescribed in this section.

**History:** En. Sec. 37, p. 47, L. 1877; re-en. Sec. 37, 1st Div. Rev. Stat. 1879; re-en. Sec. 37, 1st Div. Comp. Stat. 1887; amd. Sec. 491, C. Civ. Proc. 1895; re-en. Sec. 6440, Rev. C. 1907; re-en. Sec. 9023, R. C. M. 1921; amd. Sec. 6, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 326.

#### Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenant. 32 ALR 2d 1214.

**93-2513. (9024) Occupancy and payment of taxes necessary to prove adverse possession.** In no case shall adverse possessions be considered established under the provisions of any section or sections of this code unless it shall be shown that the land has been occupied and claimed for a period of five [5] years continuously, and the party or persons, their predecessors and grantors, have, during such period, paid all the taxes, state, county, or municipal, which have been legally levied and assessed upon said land.

**History:** En. Sec. 1, Ch. 3, L. 1917; re-en. Sec. 9024, R. C. M. 1921; amd. Sec. 7, Ch. 224, L. 1953.

#### Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

#### Burden of Proof

One claiming water rights, by virtue of adverse possession, has the burden of proving every element of the claim. *Havre Irrigation Co. v. Majerus*, 132 M 410, 318 P 2d 1076, 1078.

**Operation and Effect**

Where plaintiff and his predecessor had remained in open, exclusive, notorious and adverse possession of an abandoned river channel since 1936 and had paid taxes on improvements thereon but not on the real property because none had been assessed it was sufficient for adverse possession. *Helland v. Custer County*, 127 M 23, 256 P 2d 1085.

**Payment of Taxes**

This section requires the payment of taxes only if there are any to be paid. *Barcus v. Galbreath*, 122 M 537, 207 P 2d 559, 564.

**Payment of Taxes—Time for Payment**

All that is required under this section is that the claimant shall have claimed the land for a period of ten years [since amended] continuously and that he has paid all taxes levied during that period, but it is not necessary that each year's taxes should have been paid when due. *Laas v. All Persons*, 121 M 43, 189 P 2d 670, 675.

It is not necessary that the taxes be paid each year as assessed to meet the

requirements of this section. *Barcus v. Galbreath*, 122 M 537, 207 P 2d 559, 564.

**Possession Under Contract for Deed**

Person holding possession of land under contract for deed could not establish title by adverse possession. *Hinton v. Staunton*, 124 M 534, 228 P 2d 461, 463.

**Prior Title**

This section does not apply to a claim perfected by adverse possession for the statutory period prior to 1917, the date of enactment hereof. *Thibault v. Flynn*, 133 M 461, 325 P 2d 914.

**References**

Cited or applied in *Opp v. Boggs*, 121 M 131, 193 P 2d 379, 385; *Lowery v. Garfield County*, 122 M 571, 208 P 2d 478, 486; *Lamping v. Diehl*, 126 M 193, 246 P 2d 230, 235; *Hentzy v. Mandan Loan & Investment Co.*, 129 M 324, 286 P 2d 325, 327.

Tacking adverse possession of area not within description of deed or contract. 17 ALR 2d 1128.

**93-2515. (9026) Certain disabilities excluded from time to commence actions.** If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or for dower, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, is at the same time such title first descends or accrues, either

1. Within the age of majority ; or,
2. Insane ; or,
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term of less than for life.

The time during which disability continues is not deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five [5] years after such disability shall cease, or after the death of the person entitled, who shall die under such disability ; but such action shall not be commenced or entry, or defense made, after that period.

**History:** Ap. p. Sec. 39, p. 48, L. 1877; re-en. Sec. 39, 1st Div. Rev. Stat. 1879; re-en. Sec. 39, 1st Div. Comp. Stat. 1887; amd. Sec. 493, C. Civ. Proc. 1895; re-en. Sec. 6442, Rev. C. 1907; re-en. Sec. 9026, R. C. M. 1921; amd. Sec. 8, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 328.

**Separability Clause**

Section 9 of Ch. 224, Laws 1953 read: "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision, or part directly adjudged to

**Amendment**

The 1953 amendment inserted the word "same" before the word "time" in the first sentence and substituted "five years" for "ten years."



be invalid, inoperative or unconstitutional."

#### Repealing Clause

Section 10 of Ch. 224, Laws 1953 repealed all acts or parts of acts in conflict therewith.

#### Effective Date

Section 11 of Ch. 224, Laws 1953 provided the act should be in effect from and after July 1, 1953.

#### Minority—Time for Bringing Suit

Where the youngest of the heirs attained his majority more than ten years [since

amended] before action to establish title to land, and they brought no action within that time, they could not defend such suit by party holding under tax deed and by adverse possession, on the ground that the heirs were minors at the time the tax deed was procured. *Laas v. All Persons*, 121 M 43, 189 P 2d 670, 674.

Tolling of statute of limitations where process is not served before expiration of limitation period as affected by statute, defining commencement of action, or expressly relating to interruption of running of limitations. 27 ALR 2d 236.

**93-2516. Application of chapter to lands sold and conveyed by state.** The provisions of this chapter shall apply to all lands heretofore sold and conveyed by the state of Montana for which a valid consideration was received by the state, provided, that the state, at the time of any such sale or conveyance, was not precluded by the Constitution of Montana or by the terms of the grant of such lands by the United States from selling and disposing of the same; and provided further, that no occupant of a public way or other ground dedicated or appropriated by the state to public use, and not subject to sale, shall acquire by reason of his occupancy any title thereto.

**History:** En. Sec. 1, Ch. 195, L. 1955.

#### Title of Act

An act to add to Chapter 25, Title 93, Revised Codes of Montana, 1947, by inserting section 93-2516, making the provisions of said Chapter 25, Title 93, ap-

plicable to certain lands heretofore sold and conveyed by the state of Montana.

#### Repealing Clause

Section 2 of Ch. 195, Laws 1955 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 26—LIMITATION OF OTHER ACTIONS

#### 93-2601. (9027) Periods of limitation prescribed.

##### References

Cited or applied in *Kujich v. Lillie*, 127 M 125, 260 P 2d 383, 385; *State ex rel.*

*Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 226; *Roundup v. Liebetran*, — M —, 327 P 2d 810, 813.

#### 93-2602. (9028) Within ten years.

Absence of judgment debtor from state as suspending or tolling running of period

of limitations as to judgment. 27 ALR 2d 839.

#### 93-2603. (9029) Within eight years.

##### Action on Bond for Deed

Action to enforce "bond for deed" for certain mining rights in land was barred by this section. *Clinton v. Miller*, 124 M 463, 226 P 2d 487.

##### Effect of Suspension of Foreign Corporation

Held, that the suspension of a foreign corporation for nonpayment of taxes does not suspend the running of the statute of limitations, and hence an action based on a mortgage would be barred after eight

years under this section. The suspension does not result in an inability to get service of process on the foreign corporation for section 93-3007 provides for such service and section 93-3011 states that it is personal service so that a personal judgment may be entered on such service. *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325.

##### Part Payment—Proof

Where the plaintiff in an action on a note executed in 1931 and payable within

90 days pleaded part payment in 1934 and 1938 to bar the statute of limitations, he has the burden of proof that the payments were made, and it is not sufficient to show the indorsement on the back of the note. An indorsement of a payment on a note by the holder does not create a presumption that the payment was made at the time that the indorsement indicates. *Wight v. Stevenson*, 126 M 377, 252 P 2d 241.

#### Violation of Trust

In an action for an accounting, assuming that there was a trust relationship, when the plaintiff beneficiary in 1925 made complaint to the defendant as to

### 93-2604. (9030) Within five years.

#### Commencement of Period—Resulting Trust

Statute of limitations does not commence to run in favor of the trustee of a resulting trust until the trustee disavows the trust or asserts some right inconsistent with it. *Campanello v. Mercer*, 124 M 528, 227 P 2d 312.

#### Offset

Where debt was barred by five-year statute of limitations it could not be set up as an offset in a suit on a note and mortgage not arising out of the same

### 93-2605. (9031) Within three years.

#### Operation and Effect

Where accident, in which defendant was driving, occurred November 26, 1941 and defendant died within three years thereof and letters of administration for his estate issued December 13, 1944, and an action for tort against the estate was instituted December 11, 1945 within one year after the issuing of letters testamentary, the action was timely under section 93-2704 which provides that if a person against whom an action may be brought dies before the expiration of the

### 93-2607. (9033) Two-year limitation.

#### Subd. 4

#### Applies to Actions for Fraud or Mistake as Commonly Used

This section applies only to fraud or mistake within the common acceptance of the term. *Opp v. Boggs*, 121 M 131, 193 P 2d 379, 385.

#### Real Property Held in Trust

Where daughter conveyed real property to her mother with the understanding that it was to be held in trust for her, and mother then deeded property to another daughter with the understanding that it

how the expenses were charged and defendant denied that its conduct was wrong and continued to make similar charges, the statute of limitations began to run at that time, since at that time the plaintiff knew that the trust was being violated. *Potlatch Oil & Refining Co. v. Ohio Oil Co.*, 199 F 2d 766, 770.

#### References

Cited or applied in *Clarke v. Chamberlain*, 124 M 405, 225 P 2d 477, 481.

Entry or indorsement by creditor on note, bond, or other obligation as evidence of part payment which will toll the statute of limitations. 23 ALR 2d 1331.

transaction. *Francisco v. Francisco*, 120 M 468, 191 P 2d 317, 321, 1 ALR 2d 625.

#### Revival of Obligation

Even though original debt is barred by statute of limitations, it is sufficient consideration for a subsequent note and new promise to pay, and such new note revives the obligation. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 377.

#### References

Cited in *Potlatch Oil & Refining Co. v. Ohio Oil Co.*, 199 F 2d 766, 770; *Roundup v. Liebetran*, — M —, 327 P 2d 810, 813.

time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration. *Kujich v. Lillie*, 127 M 125, 260 P 2d 383, 385.

#### References

Cited in footnote 5 in *Zellmer v. Acme Brewing Co.*, 184 F 2d 940, 943; *Roundup v. Liebetran*, — M —, 327 P 2d 810, 813.

was to be held in trust for the first daughter, an action brought by the first daughter to recover the property was not based on fraud but upon a failure to comply with the promise to reconvey the property and was therefore not barred by this section. *Opp v. Boggs*, 121 M 131, 193 P 2d 379, 385.

#### Salary Erroneously Paid

Action against former commissioner of public works, appointed by former mayor of city, to recover money received as additional salary for managing housing proj-

ects was not barred by this section where city had no knowledge of the payments taken by commissioner. Roundup v. Leibetran, — M —, 327 P 2d 810, 817.

#### References

Cited or applied in Potlatch Oil & Refining Co. v. Ohio Oil Co., 199 F 2d 766, 770; Bond v. Birk, 126 M 250, 247 P 2d 199, 200.

### 93-2609. (9035) Within six months.

#### References

Cited or applied in Neil v. Lewis and

Clark County, 133 M 323, 323 P 2d 270, 273.

### 93-2613. (9041) Actions for relief not hereinbefore provided for.

#### References

Cited or applied in Bond v. Birk, 126 M 250, 247 P 2d 199, 200.

## CHAPTER 27—TIME OF COMMENCEMENT OF ACTIONS—GENERAL PROVISIONS CONCERNING

### 93-2702. (9048) Exception, where defendant is out of the state.

#### Application

This section does not toll the running of a statute of limitation in an action against a foreign corporation which was suspended from operating in the state for non-payment of taxes, since the person could get service of process on such cor-

poration through the secretary of state in accordance with sections 93-3007 and 93-3011 and a personal judgment could be entered on such service. Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325.

### 93-2704. (9050) Provision where person entitled dies, etc.

#### Operation and Effect

Where accident, in which defendant was driving, occurred November 26, 1941 and defendant died within three years thereof and letters of administration for his estate were issued December 13, 1944, and an action for tort against the defendant was instituted December 11, 1945 within one

year after the issuing of letters testamentary, the action was timely under this section. Kujich v. Lillie, 127 M 125, 260 P 2d 383, 385.

#### References

Cited or applied in Kujich v. Lillie, 127 M 125, 260 P 2d 383, 385.

### 93-2716. (9062) Acknowledgment and part payment.

#### References

Cited or applied in Potlatch Oil & Refining Co. v. Ohio Oil Co., 96 F Supp 685, 688.

## CHAPTER 28—PARTIES TO CIVIL ACTIONS

### 93-2801. (9067) Action to be in name of party in interest.

#### Operation in General

In an action on account for the balance due on stumpage from timber sold to the defendant, it was not error to fail to join the plaintiff's wife or the vendors from whom the plaintiff and his wife had contracted to purchase the land, since it did not appear that their rights would be prejudiced by a decision in their absence. Ballenger v. Tillman, 133 M 369, 324 P 2d 1045, 1051.

#### Stockholder of Corporation

Single stockholder has no authority to bring action to quiet title where he al-

leges that corporation "is the sole and exclusive owner in fee simple title of the lands." Noble v. Farmers' Union Trading Co., 123 M 518, 216 P 2d 925.

Sole or majority stockholders of a corporation cannot maintain an action for the corporation. The reason is, that because the majority stockholders control the corporate machinery, they necessarily control the corporation and through its officers and directors the defense and the prosecution of any litigation involving the corporation. The sole or majority stockholders then have no need to resort to the indirection of a stockholders' suit by grace of a court of equity to protect the corpo-



rate interests. Equity will deny them any such relief, if asked, because their remedy within the corporation is adequate. *Malcom v. Stoddall Land & Investment Co.*, 128 M 142, 284 P 2d 258, 260.

As a general rule stockholders may not sue upon a cause of action belonging to their corporation whether in their own names or in the name of the corporation

itself. Nor generally may they defend for it an action brought against the corporation as defendant. *Malcom v. Stoddall Land & Investment Co.*, 128 M 254, 284 P 2d 258, 260.

#### References

Cited or applied in *Cormier v. Fraser*, 130 M 170, 296 P 2d 1021, 1022.

### 93-2805. (9071) Infant, etc., to appear by guardian.

#### Sale by Administrator

Fact that no attorneys were appointed to represent minors in proceeding for sale of real estate by administrator of estate

did not affect the validity of the proceedings under section 91-4316. *Haugan v. Yale Oil Corp.*, 124 M 1, 217 P 2d 1084, 1087.

### 93-2810. (9076) When representative may sue for death, etc.

#### Contributory Negligence

Contributory negligence of a beneficiary is a bar to an action for death brought by or for such beneficiary. Hence, in an action against the United States for negligence in not providing proper ventilation in a parachute room, and failing to provide respirators so that the plaintiff's wife became ill from the inhalation of fumes and died, the plaintiff could not recover because he and his deceased wife were guilty of contributory negligence by using open containers of carbon tetrachloride and assumed the risk of inhaling the fumes. *Sartori v. U. S.*, 186 F 2d 679, 680, 682.

city policeman is acting as an agent of the state and the city, therefore, is not responsible in damages for his conduct. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876.

#### References

Cited in *State v. Lawrence*, 122 M 277, 201 P 2d 756.

Proof to establish or negative self-defense in civil action for death from intentional act. 17 ALR 2d 597.

Conflict of laws as to survival or revival of wrongful death actions against estate or personal representative of wrongdoer. 17 ALR 2d 690.

#### Liability of City for Tortious Act of City Policeman

In enforcing city ordinances and laws a

### 93-2811. (9077) Who may be joined as plaintiffs.

Appealability of order with respect to motion for joinder of additional parties. 16 ALR 2d 1023.

### 93-2812. (9078) Who may be joined as defendants.

#### References

Cited or applied in *Feely v. Lacey*, 133 M 283, 322 P 2d 1104, 1109.

Corporation as necessary or proper party defendant in proceedings to determine validity of election or appointment of corporate director or officer. 21 ALR 2d 1048.

### 93-2813. Joinder of plaintiffs in actions concerning oil and gas leases.

#### References

Cited or applied in *Braun v. Mon-O-Co Oil Corp.*, 133 M 101, 320 P 2d 366.

### 93-2824. (9086) Action—when not to abate by death, etc.

#### Criminal Prosecution

Though a civil action does not abate by the death of a party if the cause of action survive, in a criminal prosecution

the death of the convicted person abates the appeal. *State v. Lawrence*, 122 M 277, 201 P 2d 756.

**93-2825. (9087) Another person may be substituted for the defendant, etc.****Complaint Insufficient as Interpleader**

In an interpleader action, allegations of defendants tending to show that plaintiff was not a disinterested stakeholder and that it had incurred an independent liability to other defendants, were improperly stricken on the plaintiff's motion, since by such motion plaintiff failed to maintain its position as a disinterested stakeholder. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 995.

The petition or affidavit in interpleader must disclose some reasonable basis of conflicting claims to the fund or property. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 993.

An attitude of perfect disinterestedness, excluding even an indirect interest by the plaintiff is necessary if plaintiff is to maintain a bill of interpleader. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 994.

**Right to Relief**

In action to prohibit defendant from cancelling an agreement for sale of lands even

though the deposit in court might be legally insufficient as a tender to defendant, plaintiff might be relieved from forfeiture upon a showing of facts sufficient to appeal to the conscience of a court of equity under section 17-102. *Blackfeet Tribe of the Blackfeet Indian Reservation v. Klies Livestock Co.*, 160 F Supp 131, 133, 141.

**Where Rights to Property Determined in Previous Action**

Where the rights and claims of parties to attached property were fully determined by the supreme court in a prior action, the findings as to these matters were res judicata in a subsequent interpleader action. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 991.

**References**

Cited or applied in *Feely v. Lacey*, 133 M 283, 322 P 2d 1104, 1109.

Appealability of order granting or denying substitution of parties. 16 ALR 2d 1057.

**93-2826. (9088) Intervention—when it takes place and how made.****Interest in the Matter in Litigation**

Where a taxpayer, under proper procedure, filed an action against the county for a refund of taxes, the state and the state board of equalization have an interest in the subject-matter of the litigation so as to enable them to intervene in the action, not only because part of the tax collected was a state levy but also because the determinative questions raised

are of vital interest and concern as they pertain to the tax laws, the procedure thereto, and the public fiscal policy of the sovereign state. *Carlson v. Flathead County*, 130 M 24, 293 P 2d 273, 275. (Dissenting opinion, 130 M 24, 293 P 2d 273, 276.)

**References**

Cited or applied in *Feely v. Lacey*, 133 M 283, 322 P 2d 1104, 1109.

**93-2828. (9090) When other parties must be brought in.****Indispensable Parties**

Where electors brought action to enjoin a school district from carrying out contracts for construction of a gymnasium, the contractors were indispensable parties without whose presence the court is without jurisdiction to proceed with the case, particularly to a trial on the merits. *Miller v. Cut Bank High School District*, 130 M 499, 305 P 2d 319, 320. (Dissenting opinion, 130 M 499, 305 P 2d 319, 321.)

**Operation and Effect**

Where wife asks court to partition various parcels of real property in which she and her husband have an interest it is necessary that interested or affected persons be made parties. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 265.

Where plaintiff did not ask the court to

bring in some indispensable parties, the court cannot be put in error for not invoking this statute. *Miller v. Cut Bank High School District*, 130 M 499, 305 P 2d 319, 320. (Dissenting opinion, 130 M 499, 305 P 2d 319 at 321.)

In an action on account for the balance due on stumpage from timber sold to the defendant, it was not error to fail to join the plaintiff's wife or the vendors from whom the plaintiff and his wife had contracted to purchase the land, since it did not appear that their rights would be prejudiced by a decision in their absence. *Ballenger v. Tillman*, 133 M 369, 324 P 2d 1045, 1051.

**References**

Cited or applied in *Feely v. Lacey*, 133 M 283, 322 P 2d 1104, 1109.

**93-2829. (9091) Action by joint-tenant against his cotenant.****References**

Cited or applied in *Hennigh v. Hennigh*, 131 M 372, 309 P 2d 1022, 1025.

## CHAPTER 29—PLACE OF TRIAL OF CIVIL ACTIONS

**93-2901. (9093) Certain actions to be tried, etc.****Construction**

The phrase "subject of the action" as used in subdivision 1 is not synonymous with the term "cause of action" nor with the term "object of the action." Subject of the action denotes the plaintiff's principal primary right to enforce or main-

tain that for which the action is brought and does not denote the specific thing in regard to which the legal controversy is carried on. *Fraser v. Clark*, 128 M 160, 273 P 2d 105, 115. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

**93-2904. (9096) Other actions, according to the residence of the parties.****Actions for Divorce**

This section determines the place of trial of divorce actions unless the court has the power to declare otherwise. *McNeill v. McNeill*, 122 M 413, 205 P 2d 510, 511.

**Actions in Tort**

Action brought two years after dissolution of partnership for damages resulting from false representations, a paragraph of the complaint alleging that defendant purchased a house with part of the partnership funds and that plaintiff was entitled to one-half the profits received on its sale, was for damages and at law and the proper venue of the county was in the county where the tort was committed. *Brownback v. Nelson*, 122 M 525, 206 P 2d 1017, 1020.

Lincoln County was the proper county for trial of action where complaint by which plaintiff commenced suit alleged plaintiff's ownership and right of possession of the timber in Lincoln County, conversion by the defendants and resulting damage. *Johnson v. Clark*, 131 M 454, 311 P 2d 772, 775.

Plaintiff by instituting his action in a county other than where the accident occurred or the defendant resided, waived his right to have the action tried in either of these counties, and defendant had the right to have the place of trial changed to either of the latter counties, *Seifert v. Gehle*, 133 M 320, 323 P 2d 269, 270.

**Actions on Contract**

The provisions of the second sentence of this section insofar as it relates to actions upon contracts is in the nature of an exception to the general rule enacted in the main clause of the first sentence which provides generally that actions be tried in the county of the defendant's residence. *Fraser v. Clark*, 128 M 160, 273 P 2d 105, 119. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

Early decisions uniformly held that in actions upon contracts the second sentence of this section applied only to actions upon express contracts wherein the contract sued upon discloses on its face that

it was to be performed in a particular county other than that of defendant's residence. Later cases departed from the earlier decisions and held that the performance exception applies to a contract which failed to state or provide for any place where such contract was to be performed. The case of *State ex rel. Interstate Lumber Co. v. District Court*, 54 M 602, 172 P 1030 went further and expressly overruled the earlier cases. The construction given in the *Interstate Lumber Co.* case and the overruling of the earlier decisions by the case are expressly disapproved. *Fraser v. Clark*, 128 M 160, 273 P 2d 105, 119. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

The word "may" in the second sentence of this section should not be given the force of "must." *Love v. Mon-O-Co Oil Corp.*, 133 M 56, 319 P 2d 1056, 1058.

Either the county of defendant's residence, or the county where the contract was to be performed, is the proper county for the trial of the action and if the plaintiff chooses either of these counties, defendant may not have it removed, except as stated in the last part of this section, it is still subject to the power of the court to change place of trial as provided in section 93-2906. *Love v. Mon-O-Co Oil Corp.*, 133 M 56, 319 P 2d 1056, 1059.

The performance exception, appearing in the second sentence of this section, applies only to such actions as are based upon contracts which plainly show, either (a) by their express terms, or (b) by necessary implication therefrom, that the contracting parties, at the time of contracting, did mutually agree upon a particular county, other than that of defendant's residence wherein they intended that their contract was to be performed. *Love v. Mon-O-Co Oil Corp.*, 133 M 56, 319 P 2d 1056, 1059.

**Charge of Allegations in Subsequent Complaint**

Where plaintiff in first complaint for damages alleged that false representations were made in one county, he was not precluded from alleging that the false representations were made in another county in a subsequent complaint since the repre-



sentation may have been made in both places. *Brownback v. Nelson*, 122 M 525, 206 P 2d 1017, 1020.

### Construction

The general rule is that actions should be tried in the county in which the defendants reside at the commencement of the action. This is embodied in the first clause of the first section and the four subordinate clauses in that sentence provide alternatives which are departures from the general rule which are allowed under the circumstances set forth in the subordinate clauses. *Fraser v. Clark*, 128 M 160, 273 P 2d 105, 117. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

The word "may" as used in the last sentence applies to tort actions as well as to

contract actions. *Seifert v. Gehle*, 133 M 320, 323 P 2d 269, 270.

### Venue Established by Contract

Defendant in action to recover monthly rental for electric signs was not entitled to change of venue where stipulation in contract established venue of any future suit or action instituted for enforcement of contract. *Electrical Products Consolidated v. Bodell*, 132 M 243, 316 P 2d 788, 789.

### References

Cited in *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 848; *Kujich v. Lillie*, 127 M 125, 260 P 2d 383, 388.

## 93-2905. (9097) Actions may be tried in any county, unless, etc.

### Application of Section

When a timely and proper motion for a change of place of trial is pending, the court has no jurisdiction except first to rule on the motion for change of place of trial. *Johnson v. Clark*, 131 M 454, 311 P 2d 772, 775.

The district court must determine defendants' right to a change of place of trial to the proper county upon the state of plaintiff's original complaint as it stood at the time defendants first came into court and made their general appearance in the case. *Johnson v. Clark*, 131 M 454, 311 P 2d 772, 777.

### Essential Steps to Change Venue

Venue may be changed if the statutory method of securing a change is invoked

and sufficient grounds are shown. *Electrical Products Consolidated v. Bodell*, 132 M 243, 316 P 2d 788, 789.

### When Change Required

Where divorce action was not brought in county of defendant's residence and defendant appeared by general demurrer, accompanied by written motion for change of venue, affidavit of merits and demand that the action be transferred to the county of his residence, the motion should have been granted. *McNeill v. McNeill*, 122 M 413, 205 P 2d 510.

### References

Cited in *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 848.

## 93-2906. (9098) Place of trial may be changed in certain cases.

### Actions Upon Contracts

Either the county of defendant's residence, or the county where the contract was to be performed, is the proper county for the trial of the action, and if plaintiff chooses either of those counties, defendant may not have it removed, except as stated in the last part of section 93-2904, it is still subject to the power of the court to change the place of trial as provided by subdivisions 2, 3 and 4 of this section. *Love v. Mon-O-Co Oil Corp.*, 133 M 56, 319 P 2d 1056, 1059.

### Application of Section

Right of defendant to a change of place of trial to the proper county depends upon the state of plaintiff's original complaint at the time defendants made their first general appearance. *Johnson v. Clark*, 131 M 454, 311 P 2d 772, 777.

### Operation and Effect

This section and section 93-901 are

companion sections and must be construed together. *State ex rel. Coleman v. District Court*, 120 M 372, 186 P 2d 91, 94.

This section cannot become applicable until the district judge has complied with section 93-901. *State ex rel. Coleman v. District Court*, 120 M 372, 186 P 2d 91, 94.

### Power of Substituted Judge

Subdivision 4 of this section and section 93-310 give a judge called in under the provisions of section 93-901 the authority to draw additional jurors from jury box No. 3 for the remainder of the term under the provisions of section 93-1510. *State v. Hay*, 120 M 573, 194 P 2d 232, 234.

### Provisions Are Mandatory

The provisions of this section are mandatory and on timely and proper application, require the district court to change the venue. *Johnson v. Clark*, 131 M 454, 311 P 2d 772, 776.

**Time for Making Decision**

Until defendant has answered, any action of the court in determining a motion for a change of venue under subd. 3 is premature. *McNeill v. McNeill*, 122 M 413, 205 P 2d 510, 512.

Where divorce action was not brought in the county of the residence of the defendant and defendant appeared by general demurrer and demand that the action be transferred to the county of his resi-

dence, it was error for the court to refuse the transfer since the court could not be given such authority to retain jurisdiction in such county by subd. 3 of this section prior to the disposition of the demurrer and the answer of defendant. *McNeill v. McNeill*, 122 M 413, 205 P 2d 510, 511.

**References**

Cited in *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 848.

**93-2908. (9100) Papers to be transmitted—costs and fees—jurisdiction.****References**

Cited or applied in *Fraser v. Clark*, 128 M 160, 273 P 2d 105, 114.

**93-2910. (9102) Change of place of trial on agreement of parties.****Stipulation in Contract**

Assignee of contract is bound by stipulation as to venue. *Electrical Products Consolidated v. Bodell*, 132 M 243, 316 P 2d 788, 791.

Parties have a right to stipulate in advance where any action arising under a contract may be tried. *Electrical Products Consolidated v. Bodell*, 132 M 243, 316 P 2d 788, 790.

## CHAPTER 30—MANNER OF COMMENCING CIVIL ACTIONS —SERVICE OF SUMMONS

**Section 93-3008.** Service of summons on certain corporations—made on secretary of state.

**93-3010.** Duty of secretary of state.

**93-3001. (9105) Actions—how commenced.****References**

Cited or applied in *Wilson v. Wilson*, 128 M 511, 278 P 2d 219, 223.

**93-3002. (9106) Complaint—how indorsed, etc.****References**

Cited or applied in *Kujich v. Lillie*, 127 M 125, 260 P 2d 383, 385.

**93-3004. (9108) Alias summons—manner and time of issuing.****References**

Cited or applied in *Kujich v. Lillie*, 127 M 125, 260 P 2d 383, 388.

**93-3005. (9109) Notice of the pendency of an action, etc.****References**

Cited or applied in *Emery v. Emery*, 122 M 201, 200 P 2d 251, 265.

**93-3007. (9111) Summons—how served.****References**

Cited in *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325, 328;

*Bentley v. Rosebud County*, 230 F 2d 1.

**93-3008. (9112) Service of summons on certain corporations—made on secretary of state.** When an action is pending in any court in this state against a corporation organized under the laws of this state, or against a

corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in this state; or against a corporation organized under the laws of any other state or country that is actually doing business within the state of Montana or that was actually doing business within this state at the time the said action arose even though such corporation has not filed a copy of its charter in the office of the secretary of state of Montana and has not qualified to do business in this state; or against a national banking corporation who, through insolvency or lapse of charter has ceased to do business in Montana; upon any cause of action arising within this state, and the president or other head, secretary, cashier, or managing agent of such domestic corporation, or the business agent, cashier, secretary, or agent appointed to receive service of process by such corporation organized under the laws of any other state or country, or any clerk, superintendent, general agent, cashier, principal director, ticket agent, stationkeeper, managing agent, or other agent, having the management, direction, or control of any property of any corporation doing business in this state, cannot be found, upon which service of process can be made, and an affidavit is filed in the office of the clerk of the court in which the action is pending, setting forth that an action is pending in that court, and that the plaintiff has a good cause of action upon the merits, and that such corporation is a necessary party therein, and that none of the persons or officers above named can be found within the state, upon whom service of process can be made, the clerk of the court shall make an order directing process to be served upon the secretary of state of the state of Montana, or, in his absence from his office, upon the deputy secretary of state of the state of Montana; provided, however, that when service of process is made under the provisions of this section in actions and proceedings in which personal service of summons is not required to be made in order to obtain relief, including every action or proceeding commenced in this state to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance, or lien, or cloud, upon the title of real or personal property within this state, service by publication must also be made.

**History:** En. Sec. 1, Ch. 22, L. 1915; amd. Sec. 1, Ch. 37, L. 1917; re-en. Sec. 9112, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1949; amd. Sec. 1, Ch. 122, L. 1951.

#### **Amendments**

The 1949 amendment inserted the words "or against a national banking corporation who, through insolvency or lapse of charter has ceased to do business in Montana."

The 1951 amendment inserted the words appearing between the first and second semi-colons relating to corporations not having qualified to do business in the state and added the proviso.

#### **Repealing Clause**

Section 2 of Ch. 135, L. 1949 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 135, L. 1949 provided the act should be in effect upon its passage and approval. Approved March 1, 1949.

#### **Doing Business within State**

Corporation, which manufactured automobiles and had its principal place of business in Ohio was not doing business within the state for purposes of service of process where it was shown that the corporation had no agents or property in the state, and that it sold its automobiles and parts to distributors in Ohio who in turn sold them to dealers. Representatives from the corporation visited distributors and dealers but their business was to note and report the manner in which the distributors and dealers conduct the



business. *Clapper Motor Co. v. Robinson Motor Co.*, 119 F Supp 79.

#### Sufficiency of Affidavit

Affidavit that affiant was unable to locate "the President, Vice President, Cashier or other officer of the said defendants upon whom service could be made, and that there is no such agent or officer of said corporation in the State of Montana upon whom service could be had" was in substantial compliance with the require-

ments of the statute. *Hinton v. Staunton*, 124 M 534, 228 P 2d 461, 465.

#### References

Cited or applied in *Malcom v. Stoddall Land & Investment Co.*, 129 M 142, 284 P 2d 258, 259.

Who is "agent authorized by appointment" to receive service of process within purview of Federal Rules of Civil Procedure and similar state rules and statutes. 26 ALR 2d 1086.

**93-3010. (9114) Duty of secretary of state.** Upon such service being so made upon the secretary of state or his deputy, the said secretary of state or his deputy shall promptly mail the copy of summons and complaint, and copy of the order, by registered mail to the address of such corporation, at its principal home office, as shown by the papers on file in the office of the secretary of state, and in the case of corporations which have not qualified to do business within the state, to the principal home office address as supplied by the plaintiff in said action, and shall make out and mail to the clerk of the court in which the action is pending, a certificate of such mailing, which shall have attached thereto the registry receipt for such letter.

**History:** En. Sec. 3, Ch. 37, L. 1917; re-en. Sec. 9114, R. C. M. 1921; amd. Sec. 2, Ch. 122, L. 1951; amd. Sec. 1, Ch. 151, L. 1953.

#### Amendments

The 1951 amendment inserted the words "And in the case of corporations which have not qualified to do business within the state, to the principal home office address as supplied by the plaintiff in said action" and added the proviso.

The 1953 amendment deleted the proviso at the end of the section which read "provided that in cases of corporations which have not qualified to do business within this state service shall not be deemed complete unless the registry receipt shows prima facie that each copy

of summons and complaint and copy of the order was received."

#### Repealing Clauses

Section 3 of Ch. 122, Laws 1951 and Sec. 2 of Ch. 151, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 4 of Ch. 122, Laws 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Section 3 of Ch. 151, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

### 93-3011. (9115) Service to be deemed personal.

#### Operation and Effect

It is competent for the legislature to provide that service on the secretary of state shall constitute personal service on the corporation. *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325, 328.

In the *Rothrock Case* the court distinguished between substituted service and constructive service. Personal service of process means delivery to the defendant personally. But even in the case of individuals, it is competent for the legislature to give other modes of service the force of personal service. Since a corporation is but an artificial being, it is

proper for the legislature to prescribe what shall constitute personal service on such a being and it is competent for the legislature to provide that service on the secretary of state shall constitute personal service on the corporation. *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325, 328.

#### Personal Judgment

As this section deems service on the secretary of state under section 93-3007 personal service it follows that a personal judgment may be entered on such service. *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325, 328.

**93-3013. (9117) Publication of summons.****Affidavit Made by Attorney**

There is nothing in this section which prevents plaintiff's attorney from either making or filing the affidavit. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 494.

**Applicable to Quiet Title Action**

This section is made applicable to quiet title actions by section 93-6202. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 495.

**Filing Summons and Return Not Condition Precedent**

There is no provision which requires that the original summons with the return thereon must first be filed with the clerk of the court before an order of publication

may be obtained. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 495.

**Specific Performance**

A suit for specific performance of a contract to convey real property is a suit in personam and service cannot be had by publication. *State ex rel. Miller v. District Court*, 120 M 423, 186 P 2d 506, 507, 173 ALR 978.

• Sufficiency of affidavit as to due diligence in attempting to learn whereabouts of party to litigation, for the purpose of obtaining service by publication. 21 ALR 2d 929.

**93-3019. (9123) When jurisdiction of action acquired.****References**

Cited or applied in *Kujich v. Lillie*, 127 M 125, 260 P 2d 383, 388.

**93-3020. (9124) Return of summons.****Failure to File Original Summons With Return**

Mere failure or omission to file the original summons with the various returns thereon within the time specified in this section does not affect the district court's jurisdiction. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 496.

**Failure to Make Return in Time**

The court does not lose jurisdiction over a defendant who has been properly served by the failure of the sheriff to make the return within the time required by this section. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 496.

**CHAPTER 31—PLEADINGS IN GENERAL****93-3103. (9127) What pleadings are allowed.****Operation and Effect**

Where a motion for a change of venue was timely served and filed in the action by defendant's attorney, defendant was not in default. *McLeod v. McLeod*, 124 M 590, 228 P 2d 965.

Defendants filing motion to strike portions of plaintiff's complaint made their general appearance in the case. *Johnson v. Clark*, 131 M 454, 311 P 2d 772, 774.

**CHAPTER 32—THE COMPLAINT—JOINDER OF ACTIONS****93-3201. (9128) Complaint first pleading.****References**

Cited or applied in *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 999.

**93-3202. (9129) Complaint—what to contain.****Divorce Action**

In a divorce action a complaint charging desertion must be sufficiently informative as to matters of time and place of desertion as to reasonably inform the defendant of the charge. *Hosking v. Hosking*, 120 M 437, 186 P 2d 503, 504.

**Effect of Allegations on Evidence Admissible**

Where complaint alleged the only issue that defendant was required to meet as the amount of \$2,956 which plaintiff claimed to have earned, it was error to permit plaintiff to testify that there was still \$2,956 due him after he had been paid that much. It confronted defendant with

a cause of action not pleaded. *Johns v. Modern Home Crafters, Inc.*, — M —, 328 P 2d 641, 643.

### "Last Clear Chance Doctrine"

The doctrine of last clear chance has application to a case not only where defendant actually saw plaintiff in a position of peril in time to avoid the injury by the exercise of reasonable care but also to a case where in the exercise of reasonable care he should or could have discovered plaintiff in his perilous position in time to avoid the injury. *Sorrells v. Ryan*, 129 M 29, 281 P 2d 1028, 1030.

### Legal Conclusions

Statement that the defendant "wrongfully failed to perform his official duty to supply the plaintiff with license blanks" in a suit for damages against the state fish and game warden was a bald conclusion of law and insufficient to withstand general demurrer. *Meinecke v. McFarland*, 122 M 515, 206 P 2d 1012, 1014.

### Pleadings in Actions on Bills and Notes

It is a fundamental rule of pleading in actions on bills and notes that the plain-

tiff must allege facts showing title or right to sue. In an action by the payee named in the instrument, however, a formal allegation that he is still the owner and holder is unnecessary if the execution of the instrument, its delivery to the plaintiff, and the default of the maker or acceptor are alleged. *Parkinson v. Diefenderfer*, 128 M 547, 280 P 2d 424.

### Statement of Facts in Ordinary and Concise Language

It is not necessary to allege the items constituting an account, but an allegation that an indebtedness is owing from defendant to plaintiff for the balance due on "stumpage from timber purchased of and from the plaintiff" which upon demand the defendant failed and still fails to pay, is sufficient to allege the ultimate facts required to state a cause of action. *Ballenger v. Tillman*, 133 M 369, 324 P 2d 1045, 1049.

### References

Cited or applied in *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 999; *Shuey v. Shuey*, 129 M 549, 290 P 2d 1100, 1102.

## 93-3203. (9130) What causes of action may be joined.

### Divorce

Relief for causes set out in subds. 1, 2, 3 and 4 of this section cannot be joined in an action for a divorce. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 256.

### Failure to Object Waives Right

Where plaintiff failed to move the court to require the defendant to separately state and number causes of action, the objection to the intermingling of separate causes of action was waived. *Pioneer Engineering Works v. McConnell*, 123 M 171, 212 P 2d 641.

### Trespass

Where plaintiff is grazing cattle of several other persons on his lands and defendant on two separate occasions commits a trespass against such cattle the causes of action may be joined. *Cormier v. Fraser*, 130 M 170, 296 P 2d 1021.

### References

Cited or applied in *Maass v. Patterson*, 122 M 394, 204 P 2d 1040, 1041; *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 519; *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 995.

## CHAPTER 33—DEMURRER TO COMPLAINTS

## 93-3301. (9131) When defendant may demur.

### Defect in Parties

Generally, any defect in parties must be taken advantage of by special demurrer or else it is deemed waived, or if the defect of parties does not appear on the face of the complaint then to move for non-suit at the trial. *Ballenger v. Tillman*, 133 M 369, 324 P 2d 1045, 1051.

### Facts Sufficient to Constitute a Cause of Action

As actionable negligence arises only from a breach of a legal duty, and a complaint alleged that the defendant owed plaintiff, his employee, the duty of fur-

nishing him a reasonably safe place to work and alleged a breach of the duty by alleging that the defendant failed to provide a reasonably safe place to work and a reasonably safe way to travel to and from a water fountain and rest room, the complaint stated facts sufficient to constitute a cause of action and was good as against the demurrer. *Ritchie v. Northern Pac. Ry. Co.*, 128 M 218, 272 P 2d 728, 729.

### Forcible Entry and Unlawful Detainer Actions

The provisions of this chapter, sections 93-3301 to 93-3306, are made applicable



to proceedings for forcible entry and unlawful detainer by section 93-9718, since they are encompassed by and included within sections 93-2301 to 93-8717 as specified in section 93-9718. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 999.

#### **Waiver of Defects**

Where defendants filed a demurrer they thereby waived all defects in the complaint attackable only by motion and therefore motion for bill of particulars was properly overruled. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 603.

### **93-3302. (9132) Demurrer must specify, etc.**

#### **References**

Cited or applied in *Mitchell v. Garfield County*, 123 M 115, 208 P 2d 497, 504.

### **93-3306. (9136) Objections—when deemed waived.**

#### **References**

Cited or applied in *Mitchell v. Garfield County*, 123 M 115, 208 P 2d 497, 504.

#### **References**

Cited or applied in *State ex rel. Cornell v. District Court*, 122 M 266, 200 P 2d 706, 709; *Mitchell v. Garfield County*, 123 M 115, 208 P 2d 497, 504; *State ex rel. Reid v. District Court*, 126 M 586, 256 P 2d 546, 550.

Demurrer as setting up defense of bona fide purchase of real property. 33 ALR 2d 1330.

## **CHAPTER 34—ANSWER**

### **93-3401. (9137) Answer—what to contain.**

#### **Denial of Material Allegations**

Where answer denied each and every "material" allegation of the complaint and plaintiff went to trial thereon without objection, each and all allegations in the complaint were material and the plaintiff was required to make proof of such material allegations so pleaded by him. *Maass v. Patterson*, 122 M 394, 204 P 2d 1040, 1045.

#### **Forcible Entry and Unlawful Detainer Actions**

The provisions of this chapter, sections 93-3401 to 93-3415, are made applicable to proceedings for forcible entry and unlawful detainer by section 93-9718, since they are encompassed by and included within sections 93-2301 to 93-8717 as specified in section 93-9718. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 999.

### **93-3411. (9147) Partial defenses.**

#### **Burden of Proof**

Matter in mitigation of damages is a defense and the burden of pleading and proving it rests with the defendant. *Garden City Floral Co. v. Hunt*, 126 M 537, 255 P 2d 352, 358.

### **93-3415. (9151) Cross-complaint—filing—service.**

#### **Cross-complaint Proper in Forcible Entry and Unlawful Detainer Actions**

This section, included in the Code of Civil Procedure, is made applicable to

#### **Offer to do Equity**

An "offer to do equity" in the answer when not accepted as provided in section 93-8201 could not be used in evidence nor could it be regarded as an admission that defendants had waived any of their defenses. *Rachou v. McQuitty*, 125 M 1, 229 P 2d 965.

#### **Waiver of Objections**

Objections to the form of denials are waived by going to trial without first challenging the pleading by motion, demurrer or other timely and proper objection. *Maass v. Patterson*, 122 M 394, 204 P 2d 1040, 1045.

#### **References**

Cited in *Flathead Lumber Corp. v. Everett*, 127 M 310, 263 P 2d 376, 381 (dissenting opinion).

#### **Mitigation of Damages**

Matter in mitigation of damages is a defense, and the burden of pleading and proving it rests with the defendant. *Garden City Floral Co. v. Hunt*, 126 M 537, 255 P 2d 352, 358.

proceedings for forcible entry and unlawful detainer by sections 93-9707 and 93-9718. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 995, 998, 999.

**Scope of Cross-complaint in Mandamus Proceedings**

Interveners in a mandamus action are not entitled to maintain their cross-complaint unless that cross-complaint relates to, or depends upon, the duties asserted by the plaintiff against the defendant public officer. Thus, where the plaintiff seeks by mandamus to require the recorder of marks and brands to record a brand in his name as administrator whether the interveners are the owners of the brand, the animals bearing the brand, and of the proceeds of the sale of animals so branded presents a question which bears no relation to the duty of the general recorder of marks and brands to issue a certificate

to the plaintiff. *Benolken v. Miracle*, 129 M 495, 289 P 2d 953, 955.

Interveners by their cross-complaint may not transform a proceeding in mandamus against a public officer into a private dispute between them and the plaintiff to settle disputed property rights which do not relate to, or depend upon, the duty of the officer against whom the proceeding is brought. *Benolken v. Miracle*, 129 M 495, 289 P 2d 953, 956.

**References**

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 597 (dissenting opinion).

**CHAPTER 36—REPLY****93-3601. (9158) What reply to contain—time for filing.****Function of Reply—When Allegations Constitute Departure From Complaint**

In action for specific performance of contract for assignment of leases in which defense was impossibility of performance because leases had been terminated when defendant entered into contract with owner of land for purchase, a reply admitting such termination of the leases and praying for the assignment of such contracts of purchase was an abandonment of

the original cause of action and sought to enforce a different contract and therefore could not be the basis for any recovery. *Rachou v. McQuitty*, 125 M 1, 229 P 2d 965.

**References**

Cited in *Flathead Lumber Corp. v. Everett*, 127 M 310, 263 P 2d 376, 381 (dissenting opinion).

**93-3603. (9160) Failure to reply.****References**

Quoted in the dissenting opinion in *Flathead Lumber Corp. v. Everett*, 127 M 291, 263 P 2d 376, 382.

**CHAPTER 37—VERIFICATION OF PLEADINGS****93-3702. (9163) Verification of pleadings.****References**

Cited or applied in *State ex rel. Bergland v. Bradley*, 124 M 434, 225 P 2d

1024, *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 494.

**CHAPTER 38—GENERAL RULES OF PLEADING**

Section 93-3820. Adoption by reference of statements in a pleading.

**93-3801. (9164) Pleadings to be liberally construed.****Action on Indemnity Bond**

In action based upon indemnity bond issued by defendant to indemnify plaintiff against loss from fraud or dishonesty of station agent, allegation in complaint that agent while in possession of money and property belonging to plaintiff, had wrongfully and dishonestly appropriated plaintiff's products and cash money, sufficiently stated a cause of action. *Waite v. Stand-*

*ard Accident Ins. Co.*, 132 M 220, 315 P 2d 989, 992.

**Divorce Action**

A complaint in a divorce action which does not set forth the elements of the ground for divorce with sufficient certainty to establish them is not aided by this section. *Hosking v. Hosking*, 120 M 437, 186 P 2d 503, 504.

**Relief Requested**

In divorce action where complaint alleged that \$2,040 which had been in bank was plaintiff's separate property, that it was placed in her name although she had no interest in it and that she took the money without plaintiff's consent and prayer was for "such other and further relief as to the court may seem meet and

equitable in the premises," it was not error for the court to adjudge that plaintiff recover from defendant the amount of \$2,040. *Rogers v. Rogers*, 123 M 52, 209 P 2d 998, 1001.

**References**

Cited or applied in *Manning v. Zeiler*, 127 M 248, 261 P 2d 807, 808.

**93-3804. (9167) Account—how pleaded.****Foreclosure of Mechanic's Lien**

In action to foreclose mechanic's lien and recover a stated sum of money for labor and materials a complaint which did not contain an itemized statement of the materials and labor furnished was not subject to demurrer, but the defendant's remedy was under this section. *Cole v. Hunt*, 123 M 256, 211 P 2d 417, 419.

**Operation and Effect**

An allegation that an indebtedness is owing from defendant to plaintiff for the balance due on "stumpage from timber purchased of and from the plaintiff" which

upon demand the defendant has failed and still fails to pay, is sufficient to allege the ultimate facts required by the code. *Ballenger v. Tillman*, 133 M 369, 324 P 2d 1045, 1049.

Where plaintiff filed a statement of account, in an action for the balance due on stumpage from timber sold to the defendant, findings for the plaintiff based upon the complaint which sufficiently stated a cause of action and which were couched in terms of ultimate facts were sufficient. *Ballenger v. Tillman*, 133 M 369, 324 P 2d 1045, 1049.

**93-3812. (9175) Libel and slander—how stated in complaint.****Publication of Libel**

Complaint by private corporation for libel was sufficient where it charged that the publication was made of and con-

cerning it. *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 288, 289.

**93-3813. (9176) Answer in such cases.**

Joint liability for slander. 26 ALR 2d 1031.

**93-3814. (9177) Judgment determining rights between codefendants, etc.****Demand for Relief Necessary**

Fact that a court of equity when once it acquires jurisdiction will grant all the relief necessary to the adjustment of the entire subject of the action is subject to the qualification that when rights between

defendants are involved it is not proper to make determination thereof unless demanded in the pleadings. *Strack v. Federal Land Bank*, 124 M 19, 218 P 2d 1052, 1056.

**93-3820. Adoption by reference of statements in a pleading.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

**History:** En. Sec. 1, Ch. 16, L. 1953.

**Title of Act**

An act relating to pleadings in civil actions, authorizing the adoption by reference of statements in a pleading in other parts thereof.

**Repealing Clause**

Section 2 of Ch. 16, Laws 1953 repealed all acts and parts of acts in conflict therewith.



## CHAPTER 39—VARIANCE—AMENDMENTS—MISTAKES IN PLEADING

**93-3901. (9183) Material variances—how provided for.****References**

Cited or applied in *Bennett v. Dodgson*,  
129 M 228, 284 P 2d 990, 995.

**93-3903. (9185) When not to be deemed a variance—failure of proof.****References**

Cited or applied in *Bennett v. Dodgson*,  
129 M 228, 284 P 2d 990, 995.

**93-3905. (9187) Amendments by the court—enlarging time, etc.****Amendments by Leave of Court****Affirmative Showing of Abuse of Discretion Must be Made to Reverse Lower Court**

The allowance or denial of leave to amend a pleading during the course of a trial is within the sound discretion of the trial court and in the absence of an affirmative showing of abuse of discretion the supreme court will not disturb the order of the trial court. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 378.

**Amendments Allowed****To Substitute Real Party in Interest**

In action to quiet title, court was authorized, after default of original defendant, to set aside default and permit assignee of timber rights to be substituted as the party defendant. *State ex rel. Hilyard v. District Court*, 120 M 342, 184 P 2d 997.

**When Amendment Properly Refused**

After plaintiff had put in his proof and rested his case and defendant introduced some evidence in support of his defense, the court cannot be said to have abused its discretion in refusing an amendment to the answer which would have materially changed the issues. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 378.

**Discretion of Court**

When a motion to quash is sustained, it is within the discretion of the trial court either to allow an amendment or to give judgment forthwith. *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1016.

**Extending Time for Filing Demurrer**

Where motion to strike complaint was overruled and court ordered defendant to answer, defendant could, if he felt that the order prejudiced him in not permitting him to demur to the complaint, request the court for permission to file a demurrer under the provisions of this section and

if he fails to do so he waives his right to demur. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 376.

**Inapplicability Where Party Fails to Present Bill of Exceptions within time Limit**

Where a party fails to present his bill of exceptions within the time limit prescribed by section 93-5505, he may not rely upon this section for relief. Non-action is not the equivalent of a "proceeding taken against" the party and since this section is a general one while sections 93-5505 and 93-8708 are specific and pertain to bills of exceptions, the latter sections control under the well-settled rule of construction in this state that the provisions of a special statute control those of a general statute relating to the same subject-matter. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 992, 994, 995.

**Operation and Effect**

This court has repeatedly declared that default judgments are not favored and that it is the policy of the law to have every case tried on its merits. While slight abuse of discretion in refusing to set aside a default judgment is sufficient to justify a reversal of the order, only in exceptional cases will this court disturb the action of a trial court in re-opening a default. *Waggoner v. Glacier Colony of Hutterites*, 127 M 140, 258 P 2d 1162, 1168.

Trial court erred in refusing to set aside a default judgment entered after defendant's failure to answer, where evidence disclosed that defendant after being served with process went to see the plaintiff's lawyer and not finding him in talked with an associate who promised to relay defendant's message to him to the effect that the plaintiff was suing the wrong colony, and there was confusion over what was told to the defendant. *Waggoner v. Glacier Colony of Hutterites*, 127 M 140, 258 P 2d 1162.

Trial court was correct in setting aside a default judgment against the defendant

entered in a divorce decree, where it was disclosed that at the time plaintiff instituted the divorce action in Montana there was pending a divorce action by defendant against plaintiff in California and to which plaintiff had filed a cross-complaint. *Petrol v. Petrol*, 127 M 184, 259 P 2d 338.

### **Relief From Judgments, Orders, or Other Proceedings**

#### Amended Application After Motion to Quash Sustained

Where order sustained motion to quash and dismissed action it amounted to a judgment which could be set aside by complying with this section and the provisions of this section can not be avoided by filing an amended application on the theory the order on such amended application for a writ of certiorari is by implication an order to set aside the judgment of dismissal and granting leave to amend. *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1017.

#### Default Judgments

A party defendant, on application to set aside his default, must, in addition to excusing his delinquency, support the motion by an affidavit of merits setting forth the facts constituting his defense. *Holen v. Phelps*, 131 M 146, 308 P 2d 624, 627.

In ruling on a motion to set aside a default, the affidavits of merits filed by the petitioner cannot be controverted by counter affidavits. The court confines itself to an investigation of the affidavit of merits to see whether a prima facie defense is made out. *Holen v. Phelps*, 131 M 146, 308 P 2d 624, 627.

Where defendant alleged that he was owner of the record title in his motion to set aside a default and in his affidavit of merits, he has set out a prima facie defense in view of section 93-2507 which provides that the person establishing legal title is presumed to be in possession. *Holen v. Phelps*, 131 M 146, 308 P 2d 624, 627.

### **93-3908. (1910) Suing a party by a fictitious name—when allowed.**

#### **Operation and Effect**

It is sufficient to describe a party by any known and accepted abbreviation of

While the supreme court will disturb the action of a trial court in opening default only in exceptional cases, "no great abuse of discretion by the trial court in refusing to set aside a default need be shown to warrant a reversal." *Holen v. Phelps*, 131 M 146, 308 P 2d 624, 627.

#### Fraud—Probate Proceedings

This section does not provide for setting aside a judgment because of fraud, and while such relief on such ground may be available in a court of equity it is not obtainable in a court of probate. *State ex rel. Sanford v. District Court*, 124 M 429, 225 P 2d 866, 868.

#### **Variance**

Where, in action to recover value of use and occupancy, plaintiff claimed damages measured on a certain basis, and defendant denied that it had any rental value, the fact that a different rental value than that alleged in the complaint was proved was not a material variance. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 60.

#### **References**

Cited or applied in *State ex rel. Doyle v. District Court*, 126 M 615, 245 P 2d 382; *Flathead Lumber Corp. v. Everett*, 127 M 291, 263 P 2d 376, 382 (dissenting opinion); *Malcom v. Stoddall Land & Investment Co.*, 129 M 142, 284 P 2d 258, 261; *In re Hofmann's Estate*, 132 M 387, 318 P 2d 230, 235; *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 985, 988.

Reliance by employee codefendant on promise or assumption that employer would defend in employee's behalf as ground for vacation of default judgment. 16 ALR 2d 1139.

Setting aside default judgment for failure of statutory agent on whom process was served to notify defendant. 20 ALR 2d 1179.

his Christian name. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 497.

### **93-3909. (1911) No error or defect to be regarded unless, etc.**

#### **Annexation of City**

In taxpayers' suit opposing annexation of a city subdivision where trial court found that less than the required majority had protested, it must be presumed on appeal, that the lower court's proceedings are regular and contain no substantial error until otherwise shown preponderant-

ly by the plaintiff. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

#### **Error Not Presumed**

Where trial court observed the witnesses, the jury found for the plaintiff, new trial was brief, argued, considered at length and denied, the supreme court on

appeal will reverse only for manifest cause; an appeal presumes no error. *Thompson v. Mattuschek*, — M —, 333 P 2d 1022, 1025, 1026.

#### Excessive Verdict

Where verdict of jury was for ten dollars more than proof showed loss to be and there was no conflict in the evidence, the judgment entered on such verdict would not be reversed but the judgment would be modified by reducing it by ten dollars. *Miller v. Emerson*, 120 M 380, 186 P 2d 220.

#### Not Applicable Where Jurisdiction Has Not Been Acquired

This section has no application where jurisdiction is wanting. In *re Woodside-Florence Irr. Dist.*, 121 M 346, 194 P 2d 241, 254.

#### Not Applicable Where Right to Trial by Jury Involved

The provisions of this section are not applicable where the substantial right of

the litigants to have a fair trial before an impartial judge is involved. In *re Woodside-Florence Irr. Dist.*, 121 M 346, 194 P 2d 241, 254.

#### Operation in General

Where defendant in divorce action admitted that certain stocks in her name belonged to plaintiff and that she would indorse them and turn them over to plaintiff if produced, any error in the order of the court quieting title to the stock in plaintiff and ordering defendant to transfer and convey the stock to plaintiff was harmless. *Rogers v. Rogers*, 123 M 52, 209 P 2d 998, 1000.

#### References

Cited or applied in *Koger v. Halverson*, 125 M 560, 242 P 2d 273, 275; *Flathead Lumber Corp. v. Everett*, 127 M 291, 263 P 2d 376, 384 (dissenting opinion); *Hartse v. Korneychuk*, 131 M 530, 312 P 2d 795, 797; *State v. Peterson*, — M —, 328 P 2d 617, 629.

### 93-3910. (9192) Time for amendment, answer or reply, etc.

#### Operation and Effect

Where a motion for a change of venue was timely served and filed in the action

by defendant's attorney defendant was not in default. *McLeod v. McLeod*, 124 M 590, 228 P 2d 965.

## CHAPTER 41—CLAIM AND DELIVERY OF PERSONAL PROPERTY

### 93-4101. (9220) Plaintiff may claim delivery.

#### References

Cited or applied in *Emery v. Emery*, 122 M 201, 200 P 2d 251, 266; *State ex rel.*

*Olsen v. Sundling*, 128 M 596, 281 P 2d 499, 501.

### 93-4102. (9221) Affidavit and its requisites.

#### Operation and Effect

In such actions it is incumbent on plaintiff to establish by the preponderance of the evidence the right to the immediate possession in himself at the time the action is brought, and that the defendant is

wrongfully in possession. Plaintiff must rely upon the strength of his own right of possession and not upon the weakness of his adversary's claim to such right. *O'Connell v. Haggerty*, 126 M 442, 253 P 2d 578, 580.

## CHAPTER 42—INJUNCTION

### 93-4201. (9240) Injunction order defined—by whom granted.

#### Definition—Restraining Order

An order which requires a person to refrain from a particular act for any period of time, no matter what its purpose, is an injunction and this applies to a "restraining order." *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 603.

#### Operation and Effect

An injunction operates only in personam and affects only the parties to the action and a party occupying the relation of a privy who was not a party to the

suit at the time of the rendition of the judgment cannot be held to obey the mandate of the injunction. *Big Four v. Bison*, 132 M 87, 314 P 2d 863.

#### References

Cited or applied in *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693, 704; *State ex rel. Thompson v. District Court*, 132 M 53, 313 P 2d 1034, 1037.

Injunctive relief against submission of constitutional amendment, statute, municipal charter, or municipal ordinance, on



ground that proposed action would be unconstitutional. 19 ALR 2d 519.

Decree granting or refusing injunction as res judicata in action for damages in

relation to matter concerning which injunction was asked in first suit. 26 ALR 2d 446.

### 93-4202. (9241) Injunction—when allowed.

Continued value of restrictive covenant to dominant owner in protection of his property from competition as basis for its enforcement notwithstanding changes in neighborhood conditions. 2 ALR 2d 601.

Relief against union activities as affected by the fact that owner of business operates without outside help or is doing part of the work. 2 ALR 2d 1196.

Injunction by owner or lessee of oil or gas land, or mineral royalty interest therein, in respect of waste. 4 ALR 2d 201.

Right to injunction against flood protection measures as affected by adequacy of remedy at law. 5 ALR 2d 82.

Capacity of taxpayers to maintain suit to enjoin submission of initiative, referendum or recall measure to voters. 6 ALR 2d 557.

Injunction against breach of contract for will or conveyance of property at death in consideration of support or services. 7 ALR 2d 1178.

Adequacy, as regards right to injunction, of the remedy for review of order fixing public utility rates. 8 ALR 2d 839.

Injunctive relief against breach of contract, other than lease or agreement therefor, or contract for services, terminable by one party but not the other. 8 ALR 2d 1208.

Injunction against use by municipality or public of subsurface of street or highway for purposes other than sewers, pipes, conduit wires, and the like. 11 ALR 2d 189, 196, 203, 211, 214.

### 93-4203. (9242) Injunction—when not allowed.

#### Enforcement of Criminal Law

An injunction may not be granted to prevent the enforcement of the criminal law. *State ex rel. Olsen v. Horsky*, 122 M 547, 206 P 2d 1157.

#### Enjoining Enforcement of Board Order

Where the industrial accident board issued an order directing a coal mine to erect a washhouse for its employees in compliance with section 50-435, the coal mine cannot obtain an injunction to enjoin enforcement of the order based on facts which they can assert as a defense to any proceeding brought by the board. *Jeffries Coal Co. v. Industrial Accident Board*, 126 M 411, 252 P 2d 1046, 1047.

#### Injunction Pendente Lite Regarding Possession of Real Estate

Title or right to possession to real estate may not be litigated in a suit for an in-

junction against peaceful picketing as affected by employer's lack of opportunity to negotiate with union or employees. 11 ALR 2d 1069.

Injunction as remedy of tenant against stranger wrongfully interfering with his possession. 12 ALR 2d 1201, 1208.

Remedy of tenant against stranger for interference with passageway. 12 ALR 2d 1233.

Right of third party in area picketed during labor dispute, who has no connection with the dispute, to an injunction against such picketing. 15 ALR 2d 1396.

Injunction against procuring breach of contract. 26 ALR 2d 1275.

Injunction to protect charitable or eleemosynary corporation against use of same or similar name by another corporation. 27 ALR 2d 961.

Injunction as available to tenant upon landlord's breach of covenant to repair. 28 ALR 2d 473.

Injunction to restrain interference with plaintiff in possession of public office. 34 ALR 2d 560.

Injunction against parking vehicles on private way. 37 ALR 2d 944.

Injunction against pollution of subterranean waters. 38 ALR 2d 1277.

Minority stockholders' right to enjoin further or additional issuance of stock. 38 ALR 2d 1366.

junction. Where there was a lease which was allegedly breached the plaintiff is not entitled to a restraining order preventing the defendants from occupying the land pending a determination of the case on its merits since it was found that the relationship of the parties was one of landlord and tenant and was not a cropping agreement. *Davis v. Burton*, 126 M 137, 246 P 2d 236.

#### Operation and Effect

Since a private citizen, who does not show that he will be injured in any property or civil right, cannot invoke equitable cognizance of a purely political question, where plaintiff's complaint, in an action seeking an injunction preventing the secretary of state from certifying nominees for a vacancy in the board of railroad commissioners, shows that his only interest is as a taxpaying, private

citizen and prospective absentee voter, he is without standing or capacity to invoke equitable cognizance of a purely political question. *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 649.

Power to enjoin canvassing votes and declaring result of election. 1 ALR 2d 588.

### 93-4204. (9243) Injunction order—when granted.

#### Grounds for Injunction

To entitle an applicant to an injunction he must show not only that he is in danger of losing a substantial right but also that he is in no fault. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 261.

In addition to having a clear right there must also be an apparent and pressing necessity for an injunction, and the injury threatened must be imminent and such as can only be avoided by an injunction. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 261.

#### Title to Real Property

A wife may not obtain injunction to

injunction by state court against action in court of another state. 6 ALR 2d 896.

Compelling reinstatement to nonpublic office for employment by mandatory injunction prior to hearing of case. 15 ALR 2d 328.

restrain her husband from selling property when her title to the property is not clear. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 265.

Title to or right of possession of real estate is not triable by injunction. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 267.

Where, in action for injunction, to prevent trespass on land in which plaintiff claimed title to land, defendants in answer claimed title to land involved by adverse possession which plaintiff denied, the pleadings presented the issues of title and ownership which the court had power to determine. *Tiffany v. Uhde*, 123 M 507, 216 P 2d 375.

### 93-4205. (9244) Injunction order—at what time granted, etc.

#### Application of Section

This section has no application to proceedings for the abatement of a nuisance under section 94-1001 et seq. *State ex rel. Bergland v. Bradley*, 124 M 434, 225 P 2d 1024.

#### Operation and Effect

An order to show cause why a divorce decree should not be modified was not sufficiently served where nothing at all was served on the wife and where the wife's mother was served with the first order, but without supporting affidavit. *Hand v. Hand*, 131 M 571, 312 P 2d 990, 993.

#### Sufficiency of Affidavit

Where restraining order is granted on affidavits they must contain a statement of the material facts essential to establish the applicant's right to the relief sought.

*Emery v. Emery*, 122 M 201, 200 P 2d 251, 259.

The requirement that the affidavit should show that sufficient grounds exist for the restraining order is not met by statements of the legal conclusions of the pleader or of mere matters of opinion unsupported by sufficient facts. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 259.

In affidavit for restraining order to prevent defendant in divorce action from molesting plaintiff or entering their home, it was necessary to state facts showing specific improper acts or conduct. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 260.

In affidavit for restraining order to restrain withdrawal of bank funds, statement that "the defendant is addicted to spendthrift and profligate habits" is a bare conclusion and where there are no specific acts alleged, it is insufficient. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 260.

### 93-4206. (9245) When notice required.

#### Cross-Reference

See note to sec. 93-4205. *Emery v. Emery*, 122 M 201, 200 P 2d 251.

### 93-4207. (9246) Security upon injunction.

#### Consecutive Restraining Orders

Where bond was executed in connection with granting of temporary restraining order which was thereafter dissolved but on the same day the judge continued the restraint by another restraining order and

continued the bond, the sureties on the original bond were liable for damages sustained through the period of restraint imposed by the second order. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 601.

**Consideration for Bond**

A bond executed pursuant to and in substantial compliance with this section needs no consideration. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 601.

**Measure of Damages**

The measure of damages in an action on the injunction bond is the amount which will compensate for all the detriment proximately caused by the injunction during the time it is operative, or which in the ordinary course of things, would be likely to result therefrom. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 601.

**Proof of Damages**

Where there was evidence as to expenses and attorney's fees in a sum in excess of the amount of the bond, it was error to grant motion for nonsuit but case should have gone to jury. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 601.

Fact that person suing on bond became obligated for attorney's fees in injunction is sufficiently shown by proof that he employed an attorney who procured

a dissolution of the injunction and of the reasonable value of his services. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 602.

**Voluntary Dismissal—Action on Bond**

Where appeal was taken from action dissolving temporary restraining order and thereafter appellant dismissed his appeal, such dismissal constituted a final adjudication that appellant was not entitled to injunction thereby making the sureties liable. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 600.

**What May Be Recovered**

Under a bond given in accordance with this section, reasonable expenses are recoverable including attorney's fees and costs of procuring the dissolution of the restraint from the time such restraint was imposed to the final determination thereof. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 602.

**References**

Cited or applied in *Stalcup v. Cameron Ditch Co.*, 130 M 294, 300 P 2d 511, 513; *Panland v. City of Missoula*, 130 M 635, 304 P 2d 621.

**93-4208. (9247) Order to show cause.****References**

Cited in *State ex rel. Thompson v. District Court*, 132 M 53, 313 P 2d 1034, 1038.

**93-4210. (9249) Verified answer has effect of affidavit.****References**

Cited in *State ex rel. Thompson v. District Court*, 132 M 53, 313 P 2d 1034, 1038.

**93-4211. (9250) Application to dissolve or modify.****Affidavit to Set Aside**

Affidavit to set aside temporary injunction granted without notice was not a responsive pleading in answer to complaint in original action to enjoin construction and operation of stock car race track as a nuisance. *State ex rel. Thompson v. District Court*, 132 M 53, 313 P 2d 1034, 1038.

**When Modification Not Permissible**

Where complaint and affidavits showed prima facie that premises constituted a nuisance per se under section 94-1002, it was error to quash the temporary injunction issued thereunder when defendant filed affidavit under this section and before any hearing on the complaint was had. *State ex rel. Olsen v. 30 Club*, 124 M 91, 219 P 2d 307.

**93-4212. (9251) Dissolution or modification.**

Dismissal, discontinuance or nonsuit as nullifying previous temporary injunction. 11 ALR 2d 1411.

**93-4213. (9252) Costs may be awarded.****Damages**

Where mother brought habeas corpus proceedings to enforce court order awarding custody of child in divorce proceedings

she was entitled to damages under the provisions of this section. *Benson v. Benson*, 121 M 439, 193 P 2d 827, 830.



## CHAPTER 43—ATTACHMENT

## Section 93-4304. Undertaking.

**93-4301. (9256) When attachment may issue.****Effect of Dissolving Attachment**

Where an attachment is dissolved the lien on the property seized thereunder is vacated, the right to hold the property ceases, and the officer holding it should return the same promptly. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 995.

**Nature of Attachment**

The attachment of one person's property to satisfy a claim against another is a conversion of the property. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 989.

**When Attachment Not Authorized**

Held, that in a contract for the sale of real property wherein there was provided a remedy for and security to the vendors for a breach thereof, this section precluded a rightful attachment and seizure of defendant's personal property. The contract was not one for the direct payment of money and such payments due under the contract were secured by the provisions of the contract. *Fraser v. Clark*, 129 M 56, 282 P 2d 459, 468.

**References**

Cited or applied in *First Nat. Bank of Plains v. Green Mt. Soil Conservation District*, 130 M 1, 293 P 2d 289, 291.

**93-4302. (9257) Affidavit—what to contain.****Security for Note**

Held, a chattel mortgage, which by its terms stated that it was to be security for future advances, was security for a later loan so that attachment was not available in an action for default of a later loan. The chattel mortgage was plain and unambiguous and needed no construction so that parol evidence which tended to vary or alter the terms of the written mortgage

was required to be disregarded. *First Nat. Bank of Plains v. Green Mt. Soil Conservation District*, 130 M 1, 293 P 2d 289.

**References**

Cited or applied in *Fraser v. Clark*, 129 M 56, 282 P 2d 459, 466.

**93-4304. (9259) Undertaking.** Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, with two [2] or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars (\$1,000.00) or under, or, in case the amount so claimed by plaintiff shall exceed one thousand dollars (\$1,000.00), then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of ten thousand dollars (\$10,000.00). The condition of such undertaking shall be to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. At any time within thirty (30) days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) days nor more than ten (10) days, must justify before a judge of the district court, or before the clerk thereof, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment.

**History:** Ap. p. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C, 1907; re-en. Sec. 9259, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1951. Cal. C. Civ. Proc. Sec. 539.

#### **Amendment**

The 1951 amendment substituted the words "At any time within thirty (30) days after the service of summons," at the beginning of the third sentence for "Within five days after service of the summons in the action," and in the fifth sentence substituted "ten days" for "five days."

#### **Repealing Clause**

Section 2 of Ch. 15, L. 1951 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 15, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

#### **Procedure for Recovery by Defendant**

A defendant's cause of action under an attachment bond accrues only when judgment for him in the attachment action has been made, entered, and filed, so his recovery must be by a separate action on the bond rather than being included in the judgment in the original action. *Yellowstone Livestock Comm. v. Dupuis*, 133 M 454, 325 P 2d 691.

### **93-4306. (9261) Property subject to attachment.**

#### **Liquor License**

A retail liquor license is subject to attachment. *Stallinger v. Goss*, 121 M 437, 193 P 2d 810.

Attachment in action on note or bond not resulting in sale of mortgaged prop-

erty, as precluding foreclosure of real estate mortgage. 37 ALR 2d 960.

What constitutes a fraudulently contracted debt or fraudulently incurred liability obligation within purview of statute authorizing attachment on such grounds. 39 ALR 2d 1265.

### **93-4320. (9273) Property claimed by third persons.**

#### **References**

Cited in *Letz v. Letz*, 123 M 494, 215 P 2d 534.

### **93-4323. (9276) If plaintiff obtains judgment, how satisfied.**

#### **Operation and Effect**

Held, that where the sheriff of one county held the property in question under a valid writ of attachment and the judgment was rendered and writ of execution directed to the sheriff of another county,

that the sale of property by the sheriff of the former county to satisfy the judgment rendered in the latter county was proper. *Stokke v. Graham*, 129 M 96, 281 P 2d 1025, 1027.

### **93-4327. (9280) Proceedings to release attachment—before whom taken.**

#### **References**

Cited or applied in *Fraser v. Clark*, 129 M 56, 282 P 2d 459, 466.

### **93-4328. (9281) Attachment—in what cases it may be released, etc.**

#### **Appealable Order**

Fact that motion was to vacate or release attachment rather than to dissolve

the attachment would not prevent the order from being appealable. *Stallinger v. Goss*, 121 M 437, 193 P 2d 810.

### **93-4329. (9282) When a motion to discharge attachment may be made, etc.**

#### **References**

Cited or applied in *Fraser v. Clark*, 129 M 56, 282 P 2d 459, 466.

### **93-4331. (9284) When writ must be discharged.**

#### **Application**

A writ of attachment based upon a fatal-

ly defective or erroneous affidavit is improper and irregular. Such writ will be

dissolved or discharged when the affidavit on which it is issued states that the obligation is unsecured whereas it is in fact

secured. First Nat. Bank of Plains v. Green Mt. Soil Conservation District, 130 M 1, 293 P 2d 289, 292.

#### CHAPTER 44—RECEIVERS

### 93-4401. (9301) Appointment of receiver.

#### Subd. 1.

#### No Right to Receiver When Action is Based on Sister State Judgment Debt

In the state of Washington, the plaintiff had a joint interest in the house trailer, but when the divorce decree was rendered, her interest was merged in the Washington decree and judgment. In a suit in Montana, the suit is on the debt created by the judgment, and for the

collection of a judgment debt the relief by receiver does not lie. Little v. Little, 125 M 278, 234 P 2d 832, 835.

Appointment of receiver in proceedings arising out of dissolution of partnership or joint adventure, otherwise than by death of partner or at instance of creditor. 23 ALR 2d 583.

#### CHAPTER 45—DEPOSIT OF MONEY OR PROPERTY IN COURT—ENFORCING ORDER TO CONVEY

### 93-4501. (9308) Deposit in court.

#### Right to Relief

In action to prohibit defendant from cancelling an agreement for sale of lands even though the deposit in court might be insufficient as a tender to defendant, plaintiff might be relieved from forfeiture upon a showing of facts sufficient to appeal to the conscience of a court of equity under section 17-102. Blackfeet Tribe of

Blackfeet Indian Reservation v. Klies Livestock Co., 160 F Supp 131, 133, 141.

#### Tender of Payment of Judgment Refused

Where tender in payment of judgment was refused, payment could not be made by deposit in court. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 632.

#### CHAPTER 47—JUDGMENTS IN GENERAL

### 93-4701. (9313) Judgment defined.

#### Dismissal of Action

In proceeding for writ of certiorari an order sustaining a motion to quash and dismissing the proceeding was a judgment. State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1016.

An order dismissing an action is a final judgment from which an appeal can be perfected if the order has the effect of finally determining the rights of the parties. Kelly v. Harris, 158 F Supp 243, 244, 247.

#### Order Denying Petition for Writ of Prohibition

Order of district court denying petition for writ of prohibition to restrain justice court from further proceedings in criminal action was not a judgment. State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542, 543.

#### Order for an Accounting

An order for an accounting is not a

judgment since it is not a final determination of the rights of the parties. It is not final, but is a necessary step to determine what if anything the plaintiff has coming from the defendant. Corcoran v. Fousek, 126 M 223, 233 P 2d 1040, 1041.

#### Order Granting an Injunction

A judgment and order granting an injunction in interpleader action was appealable. Central Montana Stockyards v. Fraser, 133 M 168, 320 P 2d 981, 987.

#### References

Cited or applied in State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 551 (dissenting opinion).

Entry of final judgment after disagreement of jury. 31 ALR 2d 985.

Conclusiveness of judgment of dismissal in bastardy proceedings. 37 ALR 2d 840.



**93-4704. (9316) Relief to be awarded to plaintiff.****When Court May Exceed Prayer**

In divorce action it was not error for court to adjudge that plaintiff recover from defendant the amount of \$2,040 which she had withdrawn from the bank although such relief was not requested in

the prayer where the prayer asked "for such other and further relief as to the court may seem meet and equitable in the premise." *Rogers v. Rogers*, 123 M 52, 209 P 2d 998, 1001.

**93-4705. (9317) Action may be dismissed or nonsuit entered.****Entry on Court Minutes**

In proceedings in Montana state court where in open court the court granted defendant's "motion to have the case dismissed with prejudice, on its merits," and the clerk recorded this action in the court minutes, the order so entered was a judgment. *Kelly v. Harris*, 158 F Supp 243, 244, 247.

**Failure to Enter Judgment**

Under subsec. 6 of this section, dismissal must precede the entry of judgment. If the judgment is entered after the expiration of the 6 month period, but before a motion to dismiss is interposed, it is not void, hence not open to collateral attack. *Kelly v. Harris*, 158 F Supp 243, 244, 247.

**Operation and Effect**

Where actions were commenced and the summons in each case was issued and served within the period and time limit fixed and allowed by express statutes, the trial court has no "discretion" to disregard the rules of practice and procedure so prescribed and attempt to shorten the time so allowed for the performance of the acts of which the defendant complains. *Kujich v. Lillie*, 127 M 125, 260 P 2d 383, 389.

**References**

Cited or applied in *Schuster v. Northern Co.*, 127 M 39, 257 P 2d 249, 252.

**93-4708. (9320) Effect of judgment dismissing complaint.****Dismissal with Prejudice**

A judgment of dismissal may be said to be on the merits when, after plaintiff has lost the right to a dismissal without prejudice because of the filing of a counterclaim, it appears that at the time set for trial he cannot make a case in support of his complaint, and not only fails and refuses to proceed with the presentation of his case but participates in the trial upon defendant's counterclaim. *Schuster v. Northern Co.*, 127 M 39, 257 P 2d 249, 253.

Whether a judgment of dismissal is upon the merits largely depends upon the facts and circumstances of the particular case. *Schuster v. Northern Co.*, 127 M 39, 257 P 2d 249, 253.

In civil action in federal district court the federal court would not go behind a judgment of dismissal entered in state court and declare that judgment to be something other than it purported to be, i. e., a judgment on the merits, where both the state court minutes and judgment

expressly stated that the judgment was on the merits. *Kelly v. Harris*, 158 F Supp 243, 244, 248.

In prior action by pedestrian for injuries sustained when he was hit by vehicle while crossing highway, where motion of dismissal was granted as to defendant and judgment was entered on jury's verdict for codefendant, the judgment on the merits in favor of codefendant was a bar to present action against defendant only. *Willoughby v. Flem*, 158 F Supp 258, 260.

**Res Judicata**

A judgment of dismissal, wherein it expressly declares on its face that it was rendered on the merits, must be given that effect in a plea of res judicata. *Kelly v. Harris*, 158 F Supp 243, 244, 247.

**References**

Cited or applied in *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1017.

**CHAPTER 48—JUDGMENT BY DEFAULT****93-4801. (9322) In what cases judgment by default may be entered.****Default Excused**

Where defendant's delay in appearing was caused by the service of an alias summons on father and son for the purpose

of curing a defect in the original service on the minor, the default judgment was set aside. *Nelson v. Lennon*, 122 M 506, 206 P 2d 556.

False allegation of plaintiff's domicile for residence in the state as ground for vacation of default decree of divorce. 6 ALR 2d 596.

Granting relief not specifically demanded in pleading or notice in rendering default judgment in divorce or separation action. 11 ALR 2d 340.

#### CHAPTER 49—ISSUES—MODE OF TRIAL AND POSTPONEMENT— PROCEDURE TO PROCURE JURY TRIAL

**Section 93-4905.** Issues of fact—how tried—when issues both of law and fact, the former to be first disposed of.

#### 93-4901. (9323) Issue defined and the different kinds.

##### Injunction

In action by property owners to enjoin construction and operation of stock car race track as a nuisance, where defendant filed affidavit to set aside temporary injunction granted without notice and de-

murrer to complaint, trial court improperly ordered permanent injunction, as the cause was not at issue and not ready for trial. State ex rel. Thompson v. District Court, 132 M 53, 313 P 2d 1034, 1039.

#### 93-4902. (9324) Issue of law—how raised.

##### References

Cited in State ex rel. Thompson v. District Court, 132 M 53, 313 P 2d 1034, 1039.

#### 93-4903. (9325) Issue of law—how tried.

##### References

Cited or applied in Granier v. Chagnon, 122 M 327, 203 P 2d 982.

#### 93-4904. (9326) Issue of fact—how raised.

##### No Answer Filed—Effect

Where, in proceeding for writ of possession to enforce judgment in quiet title action, no answer had been filed, there were

no pleadings before the court raising any issue of fact which could be tried by a jury. Fuller v. Gibbs, 122 M 177, 199 P 2d 851, 854.

**93-4905. (9327) Issues of fact—how tried—when issues both of law and fact, the former to be first disposed of.** In actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this code. Where in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the court, subject to its power to order any such issue to be tried by a jury, or to be referred to a referee, as provided in this code.

**History:** Ap. p. Sec. 241, p. 98, L. 1877; re-en. Sec. 241, 1st Div. Rev. Stat. 1879; re-en. Sec. 250, 1st Div. Comp. Stat. 1887; en. Sec. 1034, C. Civ. Proc. 1895; re-en. Sec. 6724, Rev. C. 1907; re-en. Sec. 9327, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1939; amd. Sec. 1, Ch. 84, L. 1949. Cal. C. Civ. Proc. Sec. 592.

##### Amendment

The 1949 amendment omitted provisions relating to pretrial practice.

##### Repealing Clause

Section 2 of Ch. 84, L. 1949 repealed all acts or parts of acts in conflict therewith.

##### Effective Date

Section 3 of Ch. 84, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

##### Pretrial Conference

(The following decisions were decided under the amendment of Ch. 61, L. 1939 and prior to amendment of Ch. 84, L. 1949 which repealed provisions for pretrial conference.)

The permission granted the court to require a pretrial conference does not violate the constitutional guarantee of a jury trial.

State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

A pretrial conference is not especially for the purpose of disclosure or discovery and the fact that plaintiff furnished defendant with a bill of particulars does not dispense with the reason for a pretrial conference. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 263, 2 ALR 2d 1050.

The district court has power to establish by rule a pretrial calendar, and to make the rule effective it is within the power of the court to provide that no jury case shall be set for trial until pretrial conference thereon is had. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

As used in referring to a court calendar the word "calendar" denotes merely a list of cases to be tried. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

Where rule required pretrial conference

### **93-4910. (9332) Motion to postpone a trial for absence of testimony, etc.**

#### **Abuse of Discretion in Not Granting Continuance**

Where plaintiff filed an affidavit for a continuance wherein it was shown that the affidavit was made in good faith, that the absent witness was a material witness; that due diligence was used to procure the witness; and the defendant did not file

before setting jury cases for trial it was not required that the rule contain any definite time for the calling of a jury after the pretrial conference. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 264, 2 ALR 2d 1050.

Where a rule is adopted under the provisions of this section requiring a pretrial conference before a jury trial, such rule is not revoked in a particular case when the judge of the court is disqualified to act. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

#### **References**

Cited or applied in Little v. Little, 127 M 152, 259 P 2d 343, 344; Northern Montana Mustard Growers Co-op. v. Britton, 128 M 553, 280 P 2d 1078, 1086.

Binding effect of court's order entered after pretrial conference. 22 ALR 2d 599.

any affidavits in opposition to the motion, it was an abuse of discretion for the trial court to refuse the continuance. Dean v. Carter, 131 M 304, 309 P 2d 1032, 1034.

#### **References**

Cited or applied in State v. Moorman, 133 M 148, 321 P 2d 236, 241.

### **93-4912 to 93-4915. Repealed.**

#### **Repeal**

These sections (Secs. 1 to 4, Ch. 277, Laws 1947), providing for the calling of a jury on request where a civil action was

pending and ready for trial for two years. were repealed by Sec. 2, Ch. 62, Laws 1949. For present provisions, see sec. 93-1501.

## **CHAPTER 50—TRIAL BY JURY—FORMATION OF JURY—CHALLENGES**

Section 93-5011. Challenges for cause.

### **93-5008. (9341) Ballots—when drawn from box No. 3.**

#### **Operation and Effect**

This section which requires the jurors drawn from jury box No. 3 to be discharged at the conclusion of the case has no especial connection with section 93-

1510 and does not prevent jurors which are drawn under the provisions of such section from being drawn to serve for the remainder of the term. State v. Hay, 120 M 573, 194 P 2d 232, 234.

### **93-5010. (9343) Challenge.**

Allowance of, or refusal to allow, peremptory challenge after acceptance of jury. 3 ALR 2d 499.

Questioning jurors on voir dire regarding liability insurance in personal injury or death action. 4 ALR 2d 792.

**93-5011. (9344) Challenges for cause.** Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by this code to render a person competent as a juror;
2. Consanguinity or affinity within the sixth degree to any party.



3. Standing in the relation of guardian and ward, master and servant, debtor and creditor, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or surety on any bond or obligation for either party; provided, however, that a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely by reason of current bills of gas, water, electricity or telephone;

4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;

6. Having an unqualified opinion or belief as to the merits of the action;

7. The existence of a state of mind in the juror evincing enmity against or bias in favor of either party.

**History:** En. Sec. 134, p. 70, Bannack Stat.; re-en. Sec. 162, p. 164, L. 1867; re-en. Sec. 198, p. 66, Cod. Stat. 1871; re-en. Sec. 249, p. 100, L. 1877; re-en. Sec. 249, 1st Div. Rev. Stat. 1879; re-en. Sec. 258, 1st Div. Comp. Stat. 1887; amd. Sec. 1060, C. Civ. Proc. 1895; re-en. Sec.

6741, Rev. C. 1907; re-en. Sec. 9344, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1953. Cal. C. Civ. Proc. Sec. 602.

#### Amendment

The 1953 amendment added the proviso in subsection 3.

## CHAPTER 51—TRIAL—CONDUCT OF THE TRIAL

### 93-5101. (9349) Order of trial.

#### Instructions on Res Ipsa Loquitur

If plaintiff desires the jury instructed on the doctrine of *res ipsa loquitur*, it was their duty to tender such instruction and request that it be given. *Whitney v. Northwest Greyhound Lines*, 125 M 528, 242 P 2d 257, 266, 268, 271 (dissenting opinion).

#### Right to Open and Close

In eminent domain proceedings the party upon whom the burden of proof rests is entitled to open and close. *State v. Peterson*, — M —, 328 P 2d 617, 629.

#### Specific Objections Required

Plaintiff, an iron worker, was employed by steel contractor in placing iron and steel around windows and walls during construction of building in connection with

brick laying. In action against building contractor for injuries sustained when hoist maintained by defendants fell, after striking plank negligently placed across shaft by an employee of defendant, objection to obstructions because they placed a higher duty on defendants than that fixed by law was not sufficiently specific to be subject to review. *Le Compte v. Wardell*, — M —, 333 P 2d 1028, 1033.

Indoctrination by court of persons summoned for jury service as violating requirement of written instructions. 2 ALR 2d 1104.

Propriety of arguments and remarks by counsel implying that defendant carried liability insurance in personal injury or death action. 4 ALR 2d 786.

### 93-5102. (9350) View by jury of the premises.

#### References

Cited or applied in *State v. Allison*, 122 M 120, 199 P 2d 279, 292.

### 93-5110. (9358) Verdict—how declared—form of—polling the jury.

#### Cross-Reference

See note to sec. 93-5111. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

Validity and effect of verdict of "not guilty." 7 ALR 2d 1341.

**93-5111. (9359) Proceedings when verdict is informal.****Improper Verdict—Procedure**

After a case has been submitted to the jury and a verdict returned, accepted and filed at the direction of the court and the jury discharged from the case, the only way to reach the verdict, if insufficient or against the law, is by a timely and proper motion for a new trial. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

**Insufficient Verdict**

Where the court in its original instruction told the jury it could find but one verdict and the jury returned with a verdict for the plaintiff and also one for the

defendant for a lesser amount, the court was correct in sending the jury back for further deliberation and requiring but one verdict. *Baranko v. Grenz*, 127 M 18, 256 P 2d 1074, 1076.

**Judgment Notwithstanding the Verdict**

It is not permissible in this state to move for a judgment non obstante verdicto in a law case. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

**References**

Cited or applied in *Brown v. Grenz*, 127 M 49, 257 P 2d 246, 248.

**CHAPTER 52—THE VERDICT—GENERAL AND SPECIAL—DIRECTED WHEN****93-5201. (9360) General and special verdicts defined.**

Coercive effect of verdict urging by judge in civil case. 19 ALR 2d 457.

Validity of verdict in personal injury action which awards damages to plaintiff wife, but either finds against plaintiff husband seeking to recover medical ex-

penses and the like, or awards nothing to him. 36 ALR 2d 1333.

Validity and efficacy of accused's waiver of unanimous verdict. 37 ALR 2d 1136.

**93-5203. (9362) Verdict in actions for recovery of money, etc.**

Disregard by court of verdict's apportionment among joint tort feorsors. 8 ALR 2d 862.

**93-5205. (9364) Directed verdict—when.****Motion for Directed Verdict**

Where both plaintiff and defendant move the court for a directed verdict, the trial judge becomes the trier of questions both of law and of fact. *Granier v. Chagnon*, 122 M 327, 203 P 2d 982, 987.

**References**

Cited or applied in *Richardson v. Crone*, 127 M 200, 258 P 2d 970, 972.

**CHAPTER 53—TRIAL BY THE COURT****93-5301. (9365) When and how trial by jury may be waived.****Operation and Effect**

Where a minor, charged with being a delinquent, made a demand for a jury trial on the day preceding the trial and at the opening of the trial, the demand was made in time and there was no waiver.

Application of *Banschbach*, 133 M 312, 323 P 2d 1112, 1114.

**References**

Cited or applied in *Little v. Little*, 127 M 152, 259 P 2d 343, 344.

**93-5302. (9366) Upon trial by court, decision to be in writing, etc.****Failure to Make Findings—Remand**

Where United States district court did not make findings of fact and state conclusions of law before entry of judgment, case was remanded with directions to make such findings of fact and state conclusions of law. *Dawson County v. Hagen*, 172 F 2d 387.

**References**

Cited in footnote 9 in 8 F. R. D. 275.  
Cited or applied in *Turnbull v. Brown*, 126 M 548, 254 P 2d 1085, 1086.

**93-5303. (9367) Facts found and conclusions of law, etc.****Cross-Reference**

See annotation to sec. 93-5302. Dawson County v. Hagen, 172 F 2d 387.

**Operation and Effect**

Even though findings based upon the allegations of the pleadings are valid, they must be weighed as to sufficiency by the complaint or pleadings upon which they are based and if the findings of fact refer to the complaint, then to be sufficient, the complaint must state a cause of action.

Ballenger v. Tillman, 133 M 369, 324 P 2d 1045, 1048.

Upon proper request it is the duty of the district court to make findings, in the absence of which the cause presents grounds for reversal. Ballenger v. Tillman, 133 M 369, 324 P 2d 1045, 1048.

**References**

Cited or applied in Turnbull v. Brown, 126 M 548, 254 P 2d 1085, 1086.

**93-5305. (9369) Want of findings—judgment not reversed.****Modification of Custody Orders**

In hearings on motions to modify child custody orders, parties desiring written findings of facts and conclusions of law must move for them in writing at the close of the evidence, as the statute requires. Even then, if the evidence justifies but one conclusion, formal findings are not necessary. Trudgen v. Trudgen, — M —, 329 P 2d 225, 230.

In the absence of statute, the court need not make formal findings of fact in support of its order modifying the custody provisions of divorce decrees. Trudgen v. Trudgen, — M —, 329 P 2d 225, 229.

**When Findings Not Necessary**

Where case is submitted to court without a jury and the evidence justifies but one conclusion, formal findings are unnecessary though request be made for them in conformity with this section. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

**References**

Cited or applied in Turnbull v. Brown, 126 M 548, 254 P 2d 1085, 1086; Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 891; Bissell v. Bissell, 129 M 187, 284 P 2d 264, 269.

**93-5306. (9370) Exception for defective findings, etc.****References**

Cited or applied in Turnbull v. Brown, 126 M 548, 254 P 2d 1085, 1086.

**93-5307. (9371) Exceptions to be filed and served on opposite party.****References**

Cited or applied in Turnbull v. Brown, 126 M 548, 254 P 2d 1085, 1086; Sheridan

County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 891; Bissell v. Bissell, 129 M 187, 284 P 2d 264, 270.

**93-5308. (9372) Trial upon agreed statement of facts.****References**

Cited or applied in Shipman v. Todd, 131

M 365, 310 P 2d 300, 303 (dissenting opinion).

**CHAPTER 55—EXCEPTIONS—SETTLEMENT AND ALLOWANCE OF BILL**

Section 93-5505. Exceptions not presented at time of ruling—notice to adverse party, how settled upon, etc.

**93-5502. (9387) What deemed excepted to.****References**

Cited or applied in State ex rel. Walker

v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1015.

**93-5503. (9388) Exceptions and objections.****References**

Cited in State v. Peterson, — M —, 328 P 2d 617, 629.



**93-5505. (9390) Exceptions not presented at time of ruling—notice to adverse party, how settled upon, etc.** Whenever a motion for a new trial is pending, no bill of exceptions need be prepared or settled until the decision of the court upon motion for a new trial has been rendered, but a bill shall be prepared and settled in the same manner and within the same length of time after the decision on the motion for a new trial as is hereinafter provided for the making and settling of bills of exceptions.

Except as above provided, the party appealing from a final judgment, if he desires to present on appeal the proceedings had at the trial, must, within fifteen (15) days after the entry of judgment if the action was tried with a jury, or after receiving notice of the entry of judgment if the action was tried without a jury, or within such further time as the court or judge thereof may allow, not to exceed sixty (60) days, except upon affidavit showing the necessity for further time, prepare and file with the clerk of the court and serve upon the adverse party a bill of exceptions, containing all of the proceedings had at the trial upon which he relies, in which bill the evidence shall, unless otherwise prescribed by a rule of the supreme court, be stated in narrative form, except that the particular portion of the record showing objections to the admission or rejection of testimony upon which the party preparing the bill expects to rely, shall be set out verbatim.

Within ten (10) days after such service, the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party.

The proposed bill and amendments must, within ten (10) days thereafter, be presented by the party seeking the settlement of the bill to the judge who tried or heard the case, upon five (5) days' notice to the adverse party, or be delivered to the clerk of the court or judge. When received by the clerk, he must immediately deliver them to the judge, if he be in the county; if he be absent from the county, and either party desire the papers to be forwarded to the judge, the clerk must, upon notice in writing of either party, immediately forward them by mail, or other safe channel; if not thus forwarded, the clerk must deliver them to the judge immediately after his return to the county.

When received, the judge must designate the time and place at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated, the judge must settle the bill.

If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten (10) days after service of the amendments, upon notice of five (5) days to the adverse party, and thereupon the referee shall settle the bill. If no amendments are served, or if served are allowed, the proposed bill may be presented, with amendments, if any, to the judge or referee, for settlement without notice to the adverse party. It is the duty of the judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the objections may be presented as briefly as possible.

When settled, the bill must be signed by the judge or referee with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

In compensation cases the record certified by the industrial accident board to the district court shall be a part of the judgment roll, and not a part of the bill of exceptions, and the appellant taking an appeal to the supreme court of the state of Montana, shall by praecipe to the clerk of the district court designate such portions only of the judgment roll as the appellant deems necessary to be certified to the supreme court of the state of Montana. A copy of the praecipe shall be served upon the respondent, and filed with the clerk, and respondent may within ten (10) days after the date of service of the appellant's praecipe, excluding the day of service, likewise by praecipe served upon the appellant and filed with the clerk, designate such portions of the judgment roll which respondent desires to have incorporated in the record on appeal. Only such portions designated by the praecipes need be certified by the clerk as constituting the judgment roll.

**History:** En. Sec. 1155, C. Civ. Proc. 1895; re-en. Sec. 6788, Rev. C. 1907; amd. Sec. 3, Ch. 225, L. 1921; re-en. Sec. 9390, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1955. Cal. C. Civ. Proc. Sec. 650.

#### **Amendment**

The 1955 amendment added the last paragraph.

#### **Repealing Clause**

Section 2 of Ch. 85, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### **Discretion of Court**

The court has a wide discretion under this section. *Barcus v. Portland Cattle Loan Co.*, 122 M 534, 207 P 2d 565, 566.

#### **Effect of Failure to Have Settled Bill of Exceptions, on Appeal**

Motion to strike purported bill of exceptions from the record and dismiss appeal was granted where transcript on appeal was not certified to be correct. *Fraser v. Johnson Flying Service, Inc.*, 132 M 607, 317 P 2d 316.

#### **Effect of Failure to Present Bill within Time Limited by Statute**

This section has specific application to the time that may be lawfully allowed for the preparation, service, filing and settlement of bills of exceptions. The provisions are mandatory; thus, where the statutory time of fifteen days has elapsed and there has not been an extension of time, the trial court is without power to settle or allow a bill of exceptions. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 991 to 995.

Section 93-3905 pertaining to a court giving relief to a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect does not authorize relief from failure of a litigant

to prepare, serve, and file his bill of exceptions within the time fixed by this section as extended by lawful orders of the court made pursuant to timely application by the litigant or his counsel. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 991 to 995.

#### **Effect of Failure to Present Bill within Time Limited by Statute or Extension of Time Granted by Court**

Where a defendant served a proposed bill of exceptions after the time prescribed by statute and also after a 60 day extension granted by the court; the court was without jurisdiction to allow defendant's bill of exceptions and a motion to strike the bill of exceptions must be sustained. *Kemp v. Murphy*, 125 M 234, 233 P 2d 824.

#### **Extension of Time**

Where court extends the time and defendant relies on such extension Supreme Court will not deprive the defendant of the benefit of that order after the time for filing and serving the bill of exceptions has expired. *Barcus v. Portland Cattle Loan Co.*, 122 M 534, 207 P 2d 565, 566.

If court erroneously made order extending the time to prepare, serve and file bill of exceptions under this section it had authority to correct such order under the provisions of section 93-8405. *Barcus v. Portland Cattle Loan Co.*, 122 M 534, 207 P 2d 565, 566.

#### **Failure to Amend Bill of Exceptions by Adverse Party**

Where an adverse party did not propose amendments to a bill of exceptions and did not suggest diminution of the record prior to submission of the cause to the reviewing court, the respondent could not be heard to say that the bill did not contain all the proceedings at the trial. *Deich v. Deich*, — M —, 323 P 2d 35, 47.

**Limitation**

It is doubtful whether the legislature intended when it amended this section to still have section 93-8708 operate as a further limitation upon the courts in granting extension of time for a bill of exceptions. *State ex rel. Robbins v. Bonner*, 128 M 45, 270 P 2d 400, 402.

**Operation and Effect**

This section and section 93-8708 are special statutes pertaining to the preparation and extension of time for the service and filing of bills of exceptions, and by the well-established rule of construction in this state, control over general statutes. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 995.

Appellant entitled to an extension of time within which to file a bill of exceptions where it was shown that the official court stenographer could not prepare a transcript setting forth the evidence and proceedings. *Petition of Butts*, 128 M 118, 271 P 2d 424.

**Presumption When No Bill of Exceptions**

Where record on appeal contains no bill of exceptions but only the judgment roll, the presumption must be indulged that the evidence introduced at the trial supports the trial court's finding and judgment. *Tiffany v. Uhde*, 123 M 507, 216 P 2d 375.

In the absence of a bill of exceptions the supreme court would not review alleged error concerning the comments of

the county attorney but would presume that the trial court was correct in ruling in the manner it did. *State v. Ruona*, 133 M 243, 321 P 2d 615, 620.

**Record**

On appeal, where the lower court order granting the appellant an extension of time for the filing and serving of a bill of exception showed that it was made upon application and a showing made, the Supreme Court will not presume that the lower court acted in violation of the applicable statute in the absence of a showing to the contrary. *Erdmann v. Erdmann*, 127 M 252, 261 P 2d 367, 368.

Where the judgment roll, motion for new trial, notice of intention to move for new trial, and order of court granting new trial were properly certified to the Supreme Court, but the transcript of testimony had no proper authentication, whether called a bill of exceptions or transcript of the minutes, there could be no determination whether the trial court's order granting a new trial was correct. *Nissen v. Western Construction Equipment Co.*, 133 M 143, 320 P 2d 997, 999.

**References**

Cited in *In re Hall's Estate*, 124 M 355, 224 P 2d 138, 140, 4 St Rep 148.

Raising defense of statute of frauds by motion to strike testimony after failure to object to parol evidence. 15 ALR 2d 1330.

**93-5507. (9392) When exception is refused, etc.****References**

Cited or applied in *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693,

698; *State v. Ruona*, 133 M 243, 321 P 2d 615, 620.

**CHAPTER 56—NEW TRIALS—GROUNDS AND MOTIONS FOR—RECORD ON APPEAL FROM FINAL JUDGMENT****93-5603. (9397) When a new trial may be granted.****Subd. 5****Excessive Damages**

There is no measuring stick by which to determine the amount of damages to be awarded, other than the intelligence of a fair and impartial jury governed by a sense of justice, and each case depends on its own peculiar facts. *Thompson v. Yellowstone Livestock Comm.*, 133 M 403, 324 P 2d 412, 422.

**Subd. 7****Error in Instructions**

Where two instructions are given on the same point and there is an irreconcilable conflict between them, it is not material whether either instruction is correct as ap-

plied to the record and objection to the second instruction should have been sustained. *Bennett v. Dodgson*, 129 M 228, 284 P 2d 990, 993.

**In General****Granting of New Trial as to Part of the Issues**

Court has authority to grant a motion for new trial as to part of the issues and to deny it as to other issues. *State ex rel. Tripp v. District Court*, 130 M 574, 305 P 2d 1101, 1105.

**Supervisory Control by Supreme Court**

Where District Court acted under a misconception of law and granted a motion



for a new trial on all of the issues, although it had the power to grant the new trial upon part of the issues only, the Supreme Court under its supervisory powers may grant complete relief and set aside the order for the new trial as to the issue which the District Court felt should not be granted. *State ex rel. Tripp v. District Court*, 130 M 574, 305 P 2d 1101. (Dissenting opinion on this point, 130 M 574, 305 P 2d 1101 at 1106.)

#### References

Cited in *Perkins v. Kramer*, 121 M 595, 198 P 2d 475, 477; *State v. District Court*, 131 M 404, 310 P 2d 1055, 1057 (dissenting opinion).

Voluntary statements damaging to accused, not proper subject of testimony, ordered by a testifying police or peace officer, as ground for granting new trial. 8 ALR 2d 1013.

### 93-5605. (9399) Notice of intention—contents and service.

#### Operation and Effect

Where notice of intention to move for a new trial was to be based on the minutes of court and affidavits to be filed and no affidavits were filed and no additional time for filing was obtained from the court, the moving parties had only ten additional days after the ten day period for filing affidavits in which to have the motion heard. *State v. District Court*, 131 M 404, 310 P 2d 1055, 1056.

#### Who Is Adverse Party

Resident heirs summoned in a will contest but who did not appear are not adverse parties upon whom notice of motion

### 93-5606. (9400) Hearing of motion—continuance—papers used.

#### Extensions of Time

An order extending the time for affidavits or counter affidavits in order to be effective must be made before the lapse of time theretofore granted. *State ex rel. Tripp v. District Court*, 130 M 574, 305 P 2d 1101, 1103.

#### Time for Hearing Motion

The ten day period in this section commences to run at the expiration of the time allowed for the filing of affidavits and counter affidavits and not at the actual time of the filing. *State ex rel. Tripp v. District Court*, 130 M 574, 305 P 2d 1101, 1103.

#### Time Motion for New Trial Submitted

Where trial judge after hearing arguments on a motion for a new trial and then made an order that the matter was not considered submitted until the parties filed briefs and allowed 30 days for the

Statements of witness in civil action secured after trial inconsistent with his testimony as basis for a new trial on ground of newly-discovered evidence. 10 ALR 2d 381.

Instructions in will contest defining natural objects of testator's bounty as ground for granting new trial. 11 ALR 2d 731.

Constitutional or statutory provision forbidding reexamination of facts tried by jury as affecting power to reduce or set aside verdict because of inadequacy. 11 ALR 2d 1217.

Standing of strangers to divorce proceeding to attack validity of divorce decree. 12 ALR 2d 717.

Deafness of juror as ground for new trial. 15 ALR 2d 534.

Death or disability of court reporter before transcription or completion of notes or record as ground for new trial or reversal. 19 ALR 2d 1098.

for new trial must be served, even though no default was entered against them. In *re Hardy's Estate*, 133 M 536, 326 P 2d 692.

With respect to the definition of adverse parties upon whom notice must be served, this section and section 93-8005, relating to appeals, are on the same footing. In *re Hardy's Estate*, 133 M 536, 326 P 2d 692.

#### References

Cited or applied in *State ex rel. Gilreath v. District Court*, 127 M 431, 265 P 2d 651, 653 (dissenting opinion); *Pattyn v. Favars*, 133 M 560, 327 P 2d 818, 821.

filing of briefs and then the final briefs were filed within 26 days, the motion for a new trial was considered submitted when the last brief was filed rather than at the end of the 30-day period allowed for filing the briefs since at that time the court had everything before it necessary to decide the motion for a new trial. *State ex rel. Gilreath v. District Court*, 127 M 431, 265 P 2d 651. (See, however, dissenting opinion, 127 M 431, 265 P 2d 651, 652.)

#### When Motion Deemed Denied and Jurisdiction Lost

Where more than 15 days elapsed before any further action was taken on a motion for a new trial, the motion was by force of this section deemed denied and the court had no jurisdiction thereafter to grant the motion. *State ex rel. Green v. District Court*, 126 M 176, 246 P 2d 813.

**References**

Cited or applied in *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 270; *State v. District Court*, 131 M 404, 310 P 2d 1055, 1056.

**93-5608. (9402) Contents of record on appeal.****Copy of Notice of Appeal**

Where no copy of any notice of appeal appears in either the transcript on appeal or in the files of the Supreme Court or having been supplied in the court, the purported appeal will be dismissed for want of jurisdiction. *Hansen v. Hansen*, 129 M 516, 290 P 2d 438.

**Record on Appeal in General**

Where defendant appealed from an order granting plaintiff a new trial on the grounds of newly-discovered evidence, insufficiency of evidence, and error in law occurring at the trial, and defendant had judgment roll, transcript of testimony, settlement instructions, motion for new

Necessity that trial court give parties notice and opportunity to be heard before ordering new trial on its own motion. 23 ALR 2d 852.

trial, notice of intention to move for a new trial, and the order granting a new trial certified by the clerk, but did not have the transcript of minutes certified by the District Court, or a bill of exceptions properly prepared, the appeal was dismissed because the Supreme Court could not determine whether the order was correct. *Nissen v. Western Construction Equipment Co.*, 133 M 143, 320 P 2d 997.

**References**

Cited or applied in *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1015; *First National Bank of Missoula v. Mercer*, 128 M 535, 279 P 2d 695, 696.

**CHAPTER 57—JUDGMENT—MANNER OF GIVING AND ENTRY—JUDGMENT ROLL AND DOCKET—LIEN OF****93-5701. (9403) Judgment to be entered in twenty-four hours, etc.****Improper Verdict—Procedure**

After a case has been submitted to the jury and a verdict returned, accepted and filed at the direction of the court and the jury discharged from the case, the only way to reach the verdict, if insufficient or against the law, is by a timely and proper motion for a new trial. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

**Judgment Notwithstanding the Verdict**

It is not permissible in this state to move for a judgment non obstante verdicto in a law case. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

**93-5707. (9409) Judgment roll—contents and filing.****Order Dismissing an Action is Part of the Judgment Roll**

Final order overruling motion to quash certiorari was an order deemed excepted to by section 93-5502 and properly incorporated in the judgment roll. *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1016.

**Review of Judgment Roll on Appeal**

The presumption is that the evidence

**Operation and Effect**

In an action in tort for damages, even though plaintiff's undisputed evidence showed damage to his property in the sum of \$707.45, where plaintiff made no cross-appeal nor asked for any relief other than that the judgment be affirmed, a judgment in plaintiff's favor in the amount of \$296.88 would be affirmed. *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 518.

Power of successor judge taking office during term time to vacate, etc., judgment entered by his predecessor. 11 ALR 2d 1117.

introduced at the trial supports the trial court's finding and judgment in all cases where the record contains no bill of exceptions but only the judgment roll. *Warren v. Warren*, 127 M 259, 261 P 2d 364, 366.

Vendee's interest under executory contract as subject to judgment lien. 1 ALR 2d 740.

**93-5708. (9410) Judgment lien—when it begins and when it expires.****Operation and Effect**

The lien created by this section is not applicable in the case of a bequest of per-

sonal property to a legatee. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1088.

**93-5710. Recorded judgment or decree as notice, despite defects, etc.****Operation and Effect**

The lien created by this section is not applicable in the case of a bequest of personal property to a legatee. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1088.

Conclusiveness of allowance of account of trustee or personal representative as

respects self-dealing in assets of estate. 1 ALR 2d 1060.

Judgment as *res judicata* pending appeal or motion for a new trial, or during the time allowed therefor. 9 ALR 2d 984.

Status of judgment or order as *res judicata* as affected by subsequent dismissal, discontinuance or nonsuit. 11 ALR 2d 1420.

**93-5713. (9414) Satisfaction of a judgment—how made.****Compelling Acknowledgment of Satisfaction**

Until a judgment is in fact satisfied the court has no authority to compel an acknowledgment of satisfaction or indorsement on the face of the judgment or on the margin of the record of judgment. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 632.

**"Satisfaction in Fact" Defined**

"Satisfaction in fact" means payment of the judgment without the entry of record of such payment and a tender of satisfaction is not the same as satisfaction.

*Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 632.

**Tender of Satisfaction Refused—Extinguishing Judgment**

Where tender of satisfaction of judgment is refused there can be no "satisfaction in fact" of the judgment by the payment of the money into court, but the debt must be extinguished under the provisions of section 58-423. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 632.

Remedy and procedure to avoid release or satisfaction of judgment. 9 ALR 2d 553.

## CHAPTER 58—THE EXECUTION

**93-5802. (9417) Execution—requirements of writ.****References**

Cited or applied in *Stokke v. Graham*, 129 M 96, 281 P 2d 1025, 1027.

**93-5812. (9426) Claims by third persons.****References**

Cited in *Letz v. Letz*, 123 M 494, 215 P 2d 534.

Surplus income of trust, in excess of amount required for support and education of beneficiary, as subject of supplementary proceedings. 36 ALR 2d 1227.

Rights of creditors of life insured as to options or other benefits available to him during his lifetime. 37 ALR 2d 268.

Execution in action on note or bond, not resulting in sale of mortgaged property, as precluding foreclosure of real estate mortgage. 37 ALR 2d 962.

**93-5826. (9434) Sales—how conducted.**

What constitutes a "public sale." 4 ALR 2d 575.

Enforceability as between the parties of agreement to purchase property at judicial

sale for their joint benefit. 14 ALR 2d 1267.

## CHAPTER 59—PROCEEDINGS SUPPLEMENTARY TO EXECUTION

**93-5901. (9454) Debtor required to answer concerning his property.****References**

*Hustad v. Reed*, 133 M 211, 321 P 2d 1083.

**93-5906. (9459) Judge may order property to be applied on execution.****Operation and Effect**

If there is a denial of ownership of property which is sought in proceedings

supplementary, the court is not to determine whether the claim is valid or invalid, but may only apply the provisions of sec-



tion 93-5907 and order that an action be instituted to determine the fact in dispute. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1087.

This statute may be the basis of an order of application only when the supplementary proceedings result in the discov-

ery of property or assets in the hands of a third person which indisputably belong to the debtor, and if the ownership of the property is in dispute the court is powerless to make an order directing its delivery to the creditor. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1087.

### **93-5907. (9460) Proceedings upon claim of another party to property, etc.**

#### **Contested Claims to Property**

Contested claims as to title to property which the judgment creditor seeks to subject to his execution can not be litigated in proceedings supplementary to execution. *Letz v. Letz*, 123 M 494, 215 P 2d 534.

#### **Operation and Effect**

If there is a denial of ownership of property sought in proceedings supplementary, the court is not to determine whether the claim is valid or invalid, but may only proceed under the provisions of this section. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1087.

## **CHAPTER 61—NUISANCE, WASTE AND TRESPASS ON REAL PROPERTY—ACTIONS FOR**

### **93-6101. (9474) Nuisance defined and actions for.**

#### **References**

Cited or applied in *State ex rel. Harrison v. Deniff*, 126 M 109, 245 P 2d 140.

Attracting people in such numbers as to obstruct access to neighboring premises, as nuisance. 2 ALR 2d 437.

Casting of light on another's premises as constituting nuisance. 5 ALR 2d 705.

Coalyard as nuisance. 8 ALR 2d 419.

Liability of landowner on theory of nuisance for drowning of child. 8 ALR 2d 1280, 1309.

Liability of owner or occupant of abutting property for damage caused by fall of tree into highway. 11 ALR 2d 626.

Action for damages by tenant against stranger for nuisance to help and comfort. 12 ALR 2d 1228.

## **CHAPTER 62—QUIETING TITLE TO PROPERTY, REAL AND PERSONAL AND OTHER ACTIONS CONCERNING REAL ESTATE**

Section 93-6206. Service of summons by publication, when.

93-6207. Order for publication of summons—how obtained—affidavit.

### **93-6201. (9478.1) Quietening title to personal property, action for.**

#### **District Court Could Not Quiet Title in Special Probate Proceeding**

In a special probate proceeding under section 91-4321, a statute for the termination of a life estate, the court could not render judgment quieting title to the property in question. In *re Vincent's Estate*, 133 M 424, 324 P 2d 403, 408.

#### **Jury Trial**

Actions to quiet title and petitions for writs of possession to enforce a court's decree are of equitable cognizance and the findings of a jury in such an action are only advisory. *Fuller v. Gibbs*, 122 M 177, 199 P 2d 851, 854.

#### **Operation and Effect**

In an action to quiet title and establish the boundary between two tracts of land, where the owners of the tracts received their deeds according to governmental surveys and a fence was in existence but the fence was never described as a boundary, the parties are bound by the true line as ascertained by the survey. *Reel v. Walter*, 131 M 382, 309 P 2d 1027.

#### **References**

Cited or applied in *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438.

### **93-6202. (9478.2) Provisions applicable.**

#### **References**

Cited or applied in *Clinton v. Miller*,

124 M 463, 226 P 2d 487; *Bentley v. Rosebud County*, 230 F 2d 1.

**93-6203. (9479) Actions to quiet title to real property—parties—venue.****Scope of Proceeding**

As this section permits inquiry into the whole title of property in question, it was proper for plaintiff in his reply to an answer alleging an oil and gas interest, to seek the cancellation of the oil and gas leases. *Schumacher v. Cole*, 131 M 166, 309 P 2d 311, 313.

**Stockholder of Corporation**

A single stockholder cannot bring suit to quiet title to land to which he claims

the corporation is the sole and exclusive owner. *Noble v. Farmers' Union Trading Co.*, 123 M 518, 216 P 2d 925.

**References**

Cited or applied in *Ryan v. Bloom*, 120 M 443, 186 P 2d 879, 881; *Warren v. Warren*, 127 M 259, 261 P 2d 364, 366; *Fraser v. Clark*, 128 M 160, 273 P 2d 105, 115; *Malcom v. Stondall Land & Investment Co.*, 129 M 142, 284 P 2d 258, 261.

**93-6204. (9480) Parties defendant—unknown claimants.****Caption of Complaint**

It is not necessary that the quoted words at the end of this section be used in exactly that form but any other apt words might be used. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 492.

The commas in the quoted phrase at the end of this section are not necessary, material or of any moment. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 492.

The caption of a complaint using the quoted words at the end of this section is not defective because of the omission of the comma which appears after the

word "estate." *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 492.

**Construction**

As enacted in 1915 there was no comma after the word "estate" in the quoted words at the end of this section, and the added comma is unnecessary. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 492.

**References**

Cited or applied in *Bentley v. Rosebud County*, 230 F 2d 1.

**93-6205. (9481) Notice of pendency of action.****Construction**

The order for publication of summons referred to in this section is that provided for in section 93-6207. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 495.

**Operation and Effect**

This section specifies no particular or exclusive kind of proof to establish the fact that his pendens was filed in the county clerk's office. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 495.

**93-6206. (9482) Service of summons by publication, when.** Upon the return of summons showing the failure to find any defendant specifically named in the complaint, the plaintiff may obtain an order for the service of summons upon such defendant, to be made by publication, upon filing with the clerk of said court an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, or that the defendant, if a foreign corporation, has no agent for the service of process, nor managing or business agent, cashier, secretary, or other officer within the state; or that the defendant, if a domestic corporation, has no officer or agent of such corporation, upon whom valid service of said corporation can be made and who can, after due diligence, be found within the state. Such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry.

**History:** En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9482, R. C. M. 1921; amd. Sec. 1, Ch. 66, L. 1949; amd. Sec. 1, Ch. 229, L. 1953.

**Amendments**

The 1949 amendment substituted the words "that after due diligence and search" following "affidavit setting forth"

for "the facts" and added the last sentence.

The 1953 amendment completely rewrote this section. Prior to amendment it read "When any defendant specifically named in such complaint resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, or when any defendant is a foreign corporation, having no agent for the service of process, nor managing or business agent, cashier, secretary, or other officer within the state, or when any defendant is a domestic corporation and none of the officers or agents of such corporation, upon whom valid service of said corporation can be made, can, after due diligence, be found within the state, the plaintiff, upon the return of the summons showing due personal service within the state upon all defendants specifically named in the complaint, other than such as come within the meaning of the foregoing provisions of this section, and upon filing with the clerk of said court an affidavit setting forth that after due diligence and search with reference to any of such defendants upon whom personal service of summons within the state cannot be made, within the meaning of the foregoing provisions of this section, may obtain an order for the service of summons upon such defendants last mentioned, to be

made by publication. The affidavit shall be sufficient for all purposes if the same is worded in the terms of this statute."

#### Repealing Clauses

Section 2 of Ch. 66, Laws 1949 and Sec. 2 of Ch. 229, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### Effective Dates

Section 3 of Ch. 66, Laws 1949 provided the act should be in effect from and after the date of its passage and approval. Approved February 25, 1949.

Section 3 of Ch. 229, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 6, 1953.

#### Cross-Reference

See note to sec. 93-6207. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 494.

#### Quiet Title Actions

Where the affidavit filed in support of the motion for an order allowing service by publication failed to fulfill the statutory requirements of setting forth the evidentiary facts supporting the conclusion that the defendant resides out of the state, a judgment as to such person is without force and effect. *Bentley v. Rosebud County*, 230 F 2d 1.

**93-6207. (9483) Order for publication of summons—how obtained—affidavit.** The plaintiff or his attorney may obtain an order for the service of summons upon all unknown claimants or possible claimants by publication, upon filing with the clerk of court an affidavit stating that he has made diligent search and inquiry for all persons who claim, or might claim, any right, title, estate, or interest in, or lien, or encumbrance upon, such real property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and has specifically named as defendants in such action all such persons whose names can be ascertained; a statement in such affidavit that said affiant has so made diligent search and inquiry shall be sufficient if made in the words of this statute and it need not detail, in any respect the acts constituting such diligent search and inquiry. One affidavit and order for service by publication may be made to include all defendants, known and unknown, upon whom such service is sought, and in such event but one (1) summons shall be published, and the same shall be directed to all defendants upon whom such summons shall be served by publication; but no order for service by publication shall be made until proof of the filing of the notice of the pendency of such action, in accordance with the provisions of section 93-6205, has been made to the court. That the order above provided for may be issued by either the judge or the clerk of the court, and any order for the service of summons by publication in quiet title actions which may



have been heretofore issued or made by the clerk of the court is hereby declared to be valid and of the same force and effect as if the same had been issued or made by the judge of the court.

**History:** En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9483, R. C. M. 1921; amd. Sec. 2, Ch. 70, L. 1931; amd. Sec. 1, Ch. 103, L. 1953.

#### **Amendment**

The 1953 amendment inserted the words "or his attorney"; substituted the word "stating" for "showing" in the first sentence and added the words "a statement in such affidavit that said affiant has so made diligent search and inquiry shall be sufficient if made in the words of this statute and it need not detail, in any respect the acts constituting such diligent search and inquiry."

#### **Repealing Clause**

Section 2 of Ch. 103, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 103, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

#### **Affidavit Filed by Attorney**

There is no statutory prohibition against the attorney for the plaintiff filing the affidavit required by this section. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 494.

#### **Filing of Original Summons with Return Not Required**

There is no provision which requires that the original summons with the return thereon must first be filed with the clerk of the court before an order of publication may be obtained. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 495.

### **93-6210. (9487) Jurisdiction acquired by service—effect of decree, etc.**

#### **References**

Cited or applied in *Bentley v. Rosebud County*, 230 F 2d 1.

### **93-6211. (9488) Who bound by judgment.**

#### **References**

Cited or applied in *Bentley v. Rosebud County*, 230 F 2d 1.

### **93-6215. (9491) When value of improvements may be allowed as set-off.**

#### **Deed Not Describing Land**

A tax deed and quitclaim deed which did not describe the land did not constitute "color of title" which would enable defendant to set-off the value of improvements against the damages. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 61.

#### **Operation and Effect**

This statute does not prescribe the exclusive method by which an occupying claimant may recoup the value of improvements but a set-off may be obtained under the rules of the common law. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 62.

### **93-6225. (9501) Action to establish title to property, etc.**

#### **References**

Cited or applied in *Laas v. All Persons*, 121 M 43, 189 P 2d 670, 671.

### **93-6239. (9515) Remedies cumulative.**

#### **References**

Cited or applied in *In re Vincent's Estate*, 133 M 424, 324 P 2d 403, 408.

## **CHAPTER 63—PARTITION OF REAL ESTATE—ACTIONS FOR**

Section 93-6301.1. Personal property—partition or sale—jurisdiction.  
93-6301.2. Procedure for partition of personal property.

**93-6301.1 Personal property—partition or sale—jurisdiction.** When any personal property is owned by two or more persons, any one or more thereof

may bring an action, according to the respective rights of the persons interested therein, for the partition of such property, or for a sale of the same, or any part thereof, if it appears that a partition cannot be made without great prejudice to the owners. Such action shall be brought in the county wherein said property, or any part thereof, is situated.

**History:** En. Sec. 1, Ch. 143, L. 1959.

**Title of Act**

An act relating to actions for the partition or sale of personal property; pro-

viding where such actions may be brought; and providing for the procedure which shall be made applicable thereto; and providing for an effective date.

**93-6301.2. Procedure for partition of personal property.** The provisions contained in chapter 63 of the Revised Codes of Montana, 1947, which prescribe the manner in which real property may be sold is hereby made applicable to the action which is authorized by section 1 [93-6301.1], hereof.

**History:** En. Sec. 2, Ch. 143, L. 1959.

**Effective Date**

Section 3 of Ch. 143, Laws 1959 provided

the act should be in effect from and after its passage and approval. Approved March 5, 1959.

**93-6307. (9522) Lis pendens to be filed.**

**References**

Cited or applied in *Emery v. Emery*, 122 M 201, 200 P 2d 265.

**93-6319. (9534) Partition according to rights of parties.**

**References**

Cited and applied in *Ivins v. Hardy*, — M —, 333 P 2d 471, 477.

**93-6321. (9536) Referees must make report.**

**References**

Cited and applied in *Ivins v. Hardy*, — M —, 333 P 2d 471, 477.

**93-6322. (9537) Judgment upon confirmation of report—upon whom, etc.**

**Ranching Property**

In proceedings to partition large ranching property confirming order of the district court must stand in the absence of any substantial showing of gross inequal-

ity or the use of wrong principles in the referees' report. On appeal, the report of the referees may not be re-refered for lesser reasons. *Ivins v. Hardy*, — M —, 333 P 2d 471, 477, 480.

**93-6329. (9544) Proceeds of sale, disposition of.**

Rights of surviving spouse and children in proceeds of partition sale of homestead in decedent's estate. 6 ALR 2d 515.

CHAPTER 64—QUO WARRANTO

**93-6401. (9576) When proceedings may be instituted.**

**References**

Cited or applied in *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693, 704.

Applicability of statute of limitations or laches to quo warranto proceedings. 26 ALR 2d 828.

CHAPTER 67—JUSTICES' COURTS—MANNER OF COMMENCING ACTIONS IN

**93-6707. (9632) Time for appearance of defendant.**

**References**

Cited in *State ex rel. Sullivan v. District Court*, 122 M 1, 196 P 2d 452, 453.

## CHAPTER 80—SUPREME COURT—APPEALS TO

Section 93-8007. Stay of proceedings—money judgments.

**93-8001. (9729) How judgments and orders may be reviewed.****Appeals from Justice Courts**

The Supreme Court does not have appellate jurisdiction to review the judgments or orders of the justice courts of this state. *State ex rel. Estes v. Justice Court of Jefferson County*, 129 M 136, 284 P 2d 249, 250.

**Application**

This statute is both prohibitory and jurisdictional. *McVay v. McVay*, 128 M 31, 270 P 2d 393, 395.

**Operation and Effect**

The right of appeal is purely statutory. The legislature has laid down the rules governing appeals. *Sheridan County Electric Co-op. v. Anhalt*, 127 M 71, 257 P 2d 889, 890.

**References**

Cited or applied in *Fey v. A A Oil Corp.*, 126 M 552, 255 P 2d 339, 341.

**93-8002. (9730) Party aggrieved may appeal—names of parties.****References**

Cited or applied in *Sheridan County Electric Co-op. v. Anhalt*, 127 M 71, 257 P 2d 889, 893.

Right of express trustee to appeal from order or decree not affecting own personal interest. 6 ALR 2d 147.

Appeal by applicant for intervention from final judgment in the cause. 15 ALR 2d 368.

Parties entitled to appeal from an order on application for removal of personal representative, guardian or trustee. 37 ALR 2d 751.

**93-8003. (9731) From what judgment or order an appeal may be taken.****Subd. 1—Final Judgments****Award of Temporary Alimony and Attorneys' Fees**

An award of temporary alimony and attorneys' fees to a wife is a final judgment within the meaning of subdivision 1 of this section. *Walker v. Walker*, 129 M 295, 285 P 2d 590, 592.

**Dismissal of Action**

An order dismissing an action is a final judgment from which an appeal can be perfected if the order has the effect of finally determining the rights of the parties. *Kelly v. Harris*, 158 F Supp 243, 247.

**Findings of Fact and Conclusions of****Law**

Findings of fact and conclusions of law are not a judgment nor are they an order, as known to our practice; they are the court's statement on which he will base his order or judgment. *Sheridan County Electric Co-op. v. Anhalt*, 127 M 71, 257 P 2d 889, 891.

**Subd. 2—Orders****A. What Orders May be Appealed From****Denial of Motion to Release Attachment**

Fact that motion was to vacate or re-

lease attachment rather than to dissolve the attachment would not prevent the order denying the motion from being appealable. *Stallinger v. Goss*, 121 M 437, 193 P 2d 810.

**Denying Writ of Habeas Corpus**

An order denying a writ of habeas corpus is appealable. *State ex rel. Veach v. Veach*, 122 M 47, 195 P 2d 697, 700.

**Modification of Child Custody Decree**

An appeal from an order modifying a decree as to custody of children can only be stayed by an application for a stay made and granted under subd. 2 of this section. *Application of Nelson*, 132 M 252, 316 P 2d 1058, 1059.

**Order Denying an Injunction**

Where temporary injunction to abate nuisance under section 94-1002 was quashed the same day issued upon presentation of affidavit of defendant under section 93-4211 and in its stead was issued an order to show cause why an injunction should not issue and enjoining defendant from operating "any of the games of chance described in the complaint contrary to the laws of the State of Montana" such order was appealable. *State ex rel. Olsen v. 30 Club*, 124 M 91, 219 P 2d 307, 309.



### Order Granting an Injunction

A judgment and order granting an injunction in an interpleader action was appealable. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 987.

A judgment in an interpleader action dismissing plaintiff from the action and awarding it costs, enjoining defendants from prosecuting any action against the plaintiff involving a fund deposited, and ordering defendants to interplead in the action instituted by the plaintiff, was appealable. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 987.

### Ordering Satisfaction of Judgment

An order, after final judgment, ordering plaintiff to satisfy judgment upon tender of specified amount by defendant was an appealable order. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 632.

### Order Made after Final Judgment Denying Realtors' Motion to Strike from the Memorandum of Costs

Since an appeal may be taken from a special order made after judgment which modifies a judgment theretofore entered and adversely affects the rights of a party to the litigation, an application for a writ of supervisory control will be denied. *State ex rel. Ferris v. District Court*, 126 M 623, 255 P 2d 687.

### B. What Orders May Not be Appealed From

#### Order for an Accounting

An order for an accounting is not an appealable order under this section. *Corcoran v. Fousek*, 125 M 223, 233 P 2d 1040, 1041.

## **93-8004. (9732) Time for taking appeal.**

### Dismissal of Appeal

Where notice of appeal was not served in the time allowed by law, the Supreme Court is without jurisdiction and the appeal will be dismissed. *Malick v. Peterson*, 124 M 585, 228 P 2d 963.

### Supreme Court Rule

Supreme Court Rule VI providing that the "transcript shall be served and filed within sixty days after the appeal is perfected or the appeal will be subject to dismissal on motion of the adverse party" has the force of a statute. *In re Hanson's Estate*, 128 M 270, 273 P 2d 103.

### Time Limitation

Where the plaintiff failed to take his appeal within the statutory time limita-

### In General

#### Effect of Failure to Appeal

Where a decree of distribution was entered on an estate and no appeal was taken from such decree, an affidavit thereafter filed and recorded, stating that the affiant was an heir and devisee of the will and claiming an interest in the real estate distributed, was void on its face and constituted no cloud on the title to the land. *Hart v. Barron*, 122 M 350, 204 P 2d 797, 805.

### References

Cited or applied in *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1015; *State ex rel. Sanford v. District Court*, 124 M 429, 225 P 2d 866, 868; *Malick v. Peterson*, 124 M 585, 228 P 2d 963; *Little v. Little*, 125 M 278, 234 P 2d 832, 834; *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693, 695; *In re Hanson's Estate*, 128 M 270, 273 P 2d 103, 104; *State ex rel. Adamson v. District Court*, 128 M 538, 279 P 2d 691, 695; *Fraser v. Clark*, 129 M 56, 282 P 2d 459, 460; *In re Hansen's Estate*, 129 M 261, 284 P 2d 1007, 1009; *State v. Zumwalt*, 129 M 529, 291 P 2d 257, 259; *Marchi v. Brackman*, 130 M 228, 299 P 2d 761, 764; *State ex rel. Tripp v. District Court*, 130 M 574, 305 P 2d 1101, 1105.

Appealability of order entered on motion to strike pleading. 1 ALR 2d 422.

Provision for future accounting as affecting finality of judgment or decree for purpose of review. 3 ALR 2d 342.

Appealability of order overruling motion for judgment on pleadings. 14 ALR 2d 460.

Right to appellate review, on single appellate proceedings, of separate actions consolidated for trial in lower court, as affected by failure to object seasonably to appellate procedure. 36 ALR 2d 849.

tion he could not obtain relief by a writ of review or a writ of supervisory control. *McVay v. McVay*, 128 M 31, 270 P 2d 393, 395.

### Subd. 3—Appealable Orders

#### Order Denying Realtors' Motion to Strike from the Memorandum of Costs

An application for a writ of supervisory control will be denied since an appeal may be taken from a special order made after judgment which modifies a judgment theretofore entered and adversely affects the rights of a party to the litigation. *State ex rel. Ferris v. District Court*, 126 M 623, 255 P 2d 687.

**Cross-Reference**

See note to sec. 93-8003. *Hart v. Bar-ron*, 122 M 350, 204 P 2d 797, 805.

**References**

Cited or applied in *State ex rel. Sanford v. District Court*, 124 M 429, 225 P 2d 866, 868; *Little v. Little*, 125 M 278, 234 P 2d 832, 834; *Taylor v. Taylor*, 125 M 341, 238 P 2d 904, 905; *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693, 695; *Wilson v. Wilson*, 128 M 511, 278

P 2d 219, 221; *Fraser v. Clark*, 129 M 56, 232 P 2d 459, 460; *In re Hansen's Estate*, 129 M 261, 234 P 2d 1007, 1009; *State v. Zumwalt*, 129 M 529, 291 P 2d 257, 259; *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 984.

Motion or petition for rehearing in court below as affecting time within which appellate proceedings must be taken or instituted. 10 ALR 2d 1075.

**93-8005. (9733) Appeal—how taken.****Service of Notice**

The notice contemplated in this section is a legal notice which must be served in the manner provided in section 93-8502. *Malick v. Peterson*, 124 M 585, 228 P 2d 963.

The statute governing service of notice of appeal must be complied with in order to give the court jurisdiction. *McLeod v. McLeod*, 124 M 590, 228 P 2d 965.

**Service of Notice Must be On All Adverse Parties**

Where two defendants had filed motions for change of venue and the motion was granted as to one but denied as to the other and an appeal was taken from the order granting the motion, notice of appeal should have been given to both defendants, and Supreme Court was without jurisdiction where only defendant in whose favor the motion was granted was given such notice. *McLeod v. McLeod*, 124 M 590, 228 P 2d 965.

**Time for Filing Undertaking**

Held: that where notice of appeal was served by mail on Monday, February 4, 1952, that day is excluded from computation in accordance with section 90-407 and defendants then had five full days commencing with Tuesday, February 5th within which to file the undertaking on appeal. As by section 59-510 office hours in public offices on Saturdays are from nine o'clock to twelve noon, the filing of the undertaking on Monday, February 11th complied with the Code. Appellants may not be cut off with but four days nor with only four and one-half days nor with any other time less than the five full days allowed by statute. *Fey v. A A Oil Corp.*, 126 M 552, 255 P 2d 339.

**Who is an Adverse Party**

An "adverse party" upon whom a notice of appeal is required to be served is one whose rights may be injuriously affected by a reversal or modification of the judgment from which the appeal is taken. *Reardon v. Gilligan*, 122 M 295, 202 P 2d 242, 244.

Where plaintiff alleged that he and de-

fendant B jointly purchased land from the state with funds borrowed from defendant G in whose name deed was issued and prayed that the deed to G be declared a mortgage, and B answered denying any interest in the land, the administrator of B's estate (B having died) was an adverse party upon whom notice should have been served upon appeal by defendant G after judgment for plaintiff. *Reardon v. Gilligan*, 122 M 295, 202 P 2d 242.

An adverse party is a party who has an interest in opposition to the object sought to be accomplished by the appeal, or a party whose rights may be adversely affected by the reversal or modification of the judgment. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 988.

In the case of an appeal from a judgment in an interpleader action giving plaintiff all the relief he asked for in his complaint, defendants who were defaulted in that action for failure to answer within the time allowed by law were not "adverse parties" on whom notice of appeal must be served. *Central Montana Stockyards v. Fraser*, 133 M 168, 320 P 2d 981, 988.

With respect to the definition of adverse parties upon whom notice must be served, this section and section 93-5605, relating to motion for new trial, are on the same footing. *In re Hardy's Estate*, 133 M 536, 326 P 2d 692, overruling *In re Roberts' Estate*, 102 M 240, 255, 58 P 2d 495.

**Who is Entitled to Notice of Appeal**

An adverse party within the meaning of the statute upon whom it is necessary to serve notice of appeal, is a party to a judgment whose rights may be injuriously affected by its reversal or modification, or one who has an interest in opposing the object sought to be accomplished by the appeal. Hence, one who would be benefited by a reversal is not an adverse party. *McNaught v. Weyh*, 128 M 418, 276 P 2d 491, 495.

**References**

Cited or applied in *State ex rel. Reid*

v. District Court, 126 M 489, 255 P 2d 693, 695; Benolken v. Miracle, 128 M 262, 273 P 2d 667, 669; Flynn v. Flynn, 128 M 550, 281 P 2d 510; Fraser v. Clark, 129 M

456, 282 P 2d 459, 460; Rader v. Taylor, — M —, 333 P 2d 480, 484.

Necessity of notice of application or intention to correct error in judgment entry in appellate and review proceedings. 14 ALR 2d 261.

### 93-8006. (9734) Undertaking or deposit on appeal.

#### Ambiguity in Undertaking

If there be any ambiguity in the undertaking so far as it relates to the super-seedeas, that would furnish no ground for the dismissal of the appeal for want of an

undertaking for costs. Rader v. Taylor, — M —, 333 P 2d 480, 484.

#### References

Cited or applied in Benolken v. Miracle, 128 M 262, 273 P 2d 667, 669.

**93-8007. (9735) Stay of proceedings—money judgments.** If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order unless a written undertaking be executed on the part of the appellant, by two or more sureties, to the effect that they are bound in the amount named in the judgment or order plus interest at the legal rate for two years, plus estimated costs on appeal, in an amount to be fixed by the trial court; that if the judgment or order appealed from, or any part thereof, be affirmed, or the appeal dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken, judgment may be entered on motion of the respondent in his favor against the sureties for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal. If the judgment or order appealed from be for a greater amount than two thousand dollars (\$2,000.00), and the sureties do not state in their affidavits of justification accompanying the undertaking that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits they may state that they are severally worth, and judgment may be entered against the sureties by the court from which the appeal is taken, pursuant to the stipulations herein designated.

**History:** Ap. p. Sec. 264, p. 97, Ban-nack Stat.; re-en. Sec. 333, p. 202, L. 1867; re-en. Sec. 382, p. 110, Cod. Stat. 1871; amd. Sec. 411, p. 151, L. 1877; re-en. Sec. 411, 1st Div. Rev. Stat. 1879; re-en. Sec. 424, 1st Div. Comp. Stat. 1887; en. Sec. 1726, C. Civ. Proc. 1895; re-en. Sec. 7102, Rev. C. 1907; re-en. Sec. 9735, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1959. Cal. C. Civ. Proc. Sec. 942.

#### Amendment

The 1959 amendment deleted the word "double" which appeared after the words

"to the effect that they are bound in" and inserted the words "plus interest at the legal rate for two years, plus estimated costs on appeal, in an amount to be fixed by the trial court."

#### Operation and Effect

Though this section may not provide a stay of execution in case a writ of mandate is issued by a district court to compel the issuance of a license, the supreme court may nevertheless issue any appropriate writ to insure an appeal. Gill v. Rafn, 133 M 505, 326 P 2d 974.



**93-8011. (9739) Stay of proceedings—court may limit security.****Modification of Child Custody Decree**

An appeal from an order modifying a divorce decree as to custody of children does not stay the enforcement of the order. Such order can only be stayed by an application for an order staying the proceedings under section 93-8003, subd. 2. Application of Nelson, 132 M 252, 316 P 2d 1058, 1059.

**Operation and Effect**

On appeal from a change of venue the court has jurisdiction not only to hear and determine the appeal but also to hear, determine and act upon any incidental matters arising while the appeal is pending and that may ultimately affect the rights of the parties litigant. Thus the Supreme Court has the power to consider and determine a motion to dissolve the attachment. *Fraser v. Clark*, 128 M 160, 273 P 2d 105, 114. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

Where a notice of appeal from a judgment was served and filed, jurisdiction over the parties to the controversy and the subject-matter thereof passed from the district court and vested in the Supreme Court. It then became the duty of the Supreme Court to maintain the status

quo of the parties and their rights until the controversy could be determined in this court, so that rights involved in such appeal may not be lost or prejudiced prior to such determination. *Benolken v. Miracle*, 128 M 262, 273 P 2d 667, 669.

Where an appeal was taken from an order appointing a person executor, the district court and its clerk were then without jurisdiction to issue letters testamentary to the executor and allowing him to qualify. In *re Hansen's Estate*, 129 M 261, 284 P 2d 1007, 1010.

**Stay of Proceedings in Lower Court on Appeal**

Where an appeal is taken from a judgment declaring ownership of certain cattle and the general recorder of marks and brands held money derived from the sale of such cattle and which he deposited with the district court, the ownership and right to possession of the money was a matter embraced within the action and judgment and the lower court will be stayed from distributing such money pending determination of the appeal. *Benolken v. Miracle*, 128 M 262, 273 P 2d 667, 670.

**93-8014. (9742) Cases in which stay of proceedings not allowed.****Operation and Effect**

The issuance of letters testamentary after an appeal had been taken from the order of appointment of an executor and all acts done pursuant to the letters so issued were beyond the jurisdiction of the district court and void. Section 93-8016 does not save the action as the executor had not qualified by the time of the taking of the appeal. In *re Hansen's Estate*, 129 M 261, 284 P 2d 1007, 1010.

Where writ of prohibition was issued against liquor control board prohibiting the issuance of licenses except to persons who have permits and a writ of mandate was also issued compelling the issuance of licenses to certain persons, which writs were complied with after the district court refused to stay the writs; the questions

on appeal were moot. *State ex rel. Hagerty v. Rafn*, 130 M 554, 304 P 2d 918. (Dissenting opinion, 130 M 554, 304 P 2d 918 at 921.)

Though this section may not provide a stay of execution in case a writ of mandate is issued by a district court to compel the issuance of a license, the supreme court may nevertheless issue any appropriate writ to insure an appeal. *Gill v. Rafn*, 133 M 505, 326 P 2d 974.

**Prohibitory Injunction**

The Supreme Court is not empowered to stay, pending an appeal, the operation of a perpetual prohibitory injunction ordered in a final judgment in the district court. *Brackman v. Kruse*, 122 M 91, 217 P 2d 203, 204.

**93-8016. (9744) Acts of same valid when appointment vacated.****Construction**

The district court proceeded without jurisdiction when its clerk issued letters testamentary to a person appointed executor when an appeal was taken from the order appointing such person executor and such appeal was taken before the executor qualified. Neither his letters nor his acts done thereunder are saved by this section inasmuch as he never qualified. In *re Hansen's Estate*, 129 M 261, 284 P 2d

1007, 1010.

Held, that where a person was appointed administrator, but before he qualified, an appeal was taken from the order appointing him administrator, such person could not then qualify and enter into administration of the estate for at the time of attempting to qualify the district court had lost jurisdiction of the matter because of the appeal. In *re Hansen's Estate*, 129 M 261, 284 P 2d 1007, 1010.

**93-8017. (9745) Record on appeal from orders other than new trial.****Failure to Amend Bill of Exceptions by Adverse Party**

Where an adverse party did not propose amendments to a bill of exceptions and did not suggest diminution of the record prior to submission of the cause to the reviewing court, the respondent could not be heard to say that the bill did not contain all the proceedings at the trial. *Deich v. Deich*, — M —, 323 P 2d 35, 47.

**Operation and Effect**

The bill of exceptions referred to in this section is the bill of exceptions prepared under the provisions of section 93-5505. *Deich v. Deich*, — M —, 323 P 2d 35, 48.

**References**

Cited or applied in *Flynn v. Flynn*, 128 M 550, 281 P 2d 510; *Hansen v. Hansen*, 129 M 516, 290 P 2d 438, 439.

**93-8018. (9746) Authentication of copies—abbreviated record.****Operation and Effect**

A transcript on appeal must be certified to be correct by either the clerk of the trial court or by the attorneys in the case, and if it is not done, a motion to dismiss is well founded. *Kemp v. Murphy*, 125 M 234, 233 P 2d 824, 826.

**References**

Cited or applied in *Hansen v. Hansen*, 129 M 516, 290 P 2d 438, 439.

**93-8019. (9747) When an appeal may be dismissed.****Failure to File Transcript**

Where no extension of time was requested nor allowed for the filing of appellant's transcript on appeal, the appeal must be dismissed. *First National Bank of Missoula v. Mercer*, 128 M 535, 279 P 2d 695, 697.

**Justiciable Controversy**

The Supreme Court may dismiss an appeal of its own motion when it finds that there is no justiciable controversy. *Gill v. Rafn*, 133 M 505, 326 P 2d 974.

**Laches in Preparing Transcript**

On motion to dismiss appeal the fact that appellant did obtain an order from the trial court purporting to extend the time may be considered in determining whether she was guilty of laches in preparing her transcript on appeal. *Rader v. Taylor*, — M —, 333 P 2d 480, 483.

**Operation and Effect**

A motion to dismiss an appeal on the grounds that no transcript or brief of appeal had been served or filed by the appellants within the time prescribed by the rules of the Supreme Court will be denied when it appears that prior to the consideration of the motion to dismiss the appellant's transcript had been filed with the Supreme Court and the record perfected to the satisfaction of the court and the delay in filing such transcript has been without laches on the part of the appellants. *McNaught v. McCahan*, 126 M 616, 250 P 2d 912, 913.

**References**

Cited or applied in *Fey v. A A Oil Corp.*, 126 M 552, 255 P 2d 339, 341; *Flynn v. Flynn*, 128 M 550, 281 P 2d 510; *Deich v. Deich*, — M —, 323 P 2d 35, 48.

**93-8020. (9748) Effect of dismissal.****Operation and Effect**

In the absence of fraud, perjury or other collusive action, after the Supreme Court's dismissal of an appeal from the district court's judgment denying a petition for a writ of mandate, such judgment could not again be challenged by another action in the district court. *Gray v. Bohart*, 131 M 522, 312 P 2d 529, 530.

**Subsequent Appeal**

Where appeal was dismissed a subsequent appeal taken from the same judgment within the time allowed for taking

appeals must likewise be dismissed. *Libin v. Huffine*, 124 M 361, 224 P 2d 144.

If plaintiffs are aggrieved by dismissal, their remedy is to promptly apply to Supreme Court to have order of dismissal modified and not to take another appeal from the same judgment. *Libin v. Huffine*, 124 M 361, 224 P 2d 144, 146.

**References**

Cited or applied in *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693, 701, 705; *Deich v. Deich*, — M —, 323 P 2d 35, 48.

**93-8021. (9749) Supplementing defective record.****References**

Cited in *In re Hall's Estate*, 124 M 355, 224 P 2d 138, 140; *Deich v. Deich*, — M —, 323 P 2d 35, 48.

**93-8023. (9751) Ruling against respondent may be reviewed.****Cross-appeal When Necessary**

This section does not do away with the necessity for cross-appeals in cases where in a party feels himself aggrieved by rulings on matters separate and distinct from those sought to be reviewed by appellant. *Francisco v. Francisco*, 120 M 468, 191 P 2d 317, 319, 1 ALR 2d 625.

In action to foreclose lien by taker up of animals under section 46-1410, where defendant appealed but plaintiff did not cross-appeal, a cross-assignment of error by plaintiff contending that allowance of ten cents per goat per day for caring for animals was not a reasonable allowance but that allowance should have been fifty cents per goat per day, could not be considered since the error was not of a compensatory character. *Doornbos v. Ihde*, 124 M 570, 228 P 2d 235, 237.

**Failure to Make Assignment of Error or Cross Assignment of Error**

Where appellant did not make an assignment of error, the court will likewise excuse the failure of the respondent to make a cross assignment of error. *National Surety Corp. v. Kruse*, 121 M 202, 192 P 2d 317, 318.

**93-8024. (9752) Remedial powers of an appellate court.****Operation and Effect**

Where district court issued a writ of prohibition prohibiting the liquor control board from issuing licenses to persons other than those who had permits, and also issued a writ of mandate directing the issuance of licenses to certain persons, which writs the court refused to stay pending appeal, and the parties to whom the licenses were issued engaged in the business of selling liquor at retail; the questions on appeal are moot, since the court on appeal could not restore the parties to the status quo and could not effect restitution. *State ex rel. Hagerty v. Rafn*, 130 M 554, 304 P 2d 918. (Dissenting opinion, 130 M 554, 304 P 2d 918 at 921.)

While the subject of the controversy and the parties are before the court it has jurisdiction to enforce restitution of an amount lost through the enforcement of a judgment subsequently reversed. *Waggoner v. Glacier Colony of Hutterites*, 131 M 525, 312 P 2d 117, 118.

**Order of Restitution**

District court erred in refusing motion

**Irregularity in Jury Proceedings**

Affidavit of eight of the jurors, who were enough to render a verdict, stated that they were not in disagreement as to what the evidence showed. The only jurors who desired some or all of the testimony read were those who finally voted against the verdict. They had hoped to influence the other jurors to change their minds by having testimony read. The other jurors, being two-thirds of them, stated definitely that their verdict would not have been different had the testimony or any part of it been read to them. The irregularity, if it actually existed, did not affect verdict and was not cause for reversal where it was clear that it did not affect substantial right of plaintiff. *Galliger v. Hansen*, 133 M 34, 319 P 2d 1051, 1055.

**References**

Cited or applied in *Sheridan County Electric Co-op. v. Anhalt*, 127 M 71, 257 P 2d 889, 893.

of appellant for order of restitution in proceedings dissolving partnership between two brothers, in which one of them pursuant to original judgment of the district court obtained possession and control over all of the property of the partnership save that portion paid into court in an attempt to satisfy the judgment in respect to appellant, the other brother, where there was an unjust benefit conferred upon purchaser as a result of the district court's judgment. He had no legal right to the amount given him of the proceeds of the partnership and the judgment had been modified declaring appellant the owner of certain property previously paid over to the purchaser. *Hansen v. Hansen*, — M —, 329 P 2d 791.

**Rights Subject of Restitution**

The right of the Montana liquor control board to deny a license is not personal to the members or of such nature that it may be subject of restitution under this section. *Gill v. Rafn*, 133 M 505, 326 P 2d 974.



**93-8025. (9753) Remittitur must be certified to the clerk, etc.****Error in Entry by Court Below**

Where Supreme Court, on appeal, by its judgment and remittitur, modified the judgment of the lower court, an entry by the lower court to the effect that its former judgment "stand for naught" is error and can be corrected. *Hansen v. Hansen*, 130 M 496, 304 P 2d 1107, 1108.

**Operation and Effect**

The entry of the judgment rendered by the Supreme Court by the clerk of the district court as directed by statute ipso

facto modifies the judgment theretofore entered by the district court; and the judgment of the Supreme Court so entered becomes the final judgment in the cause. *Hansen v. Hansen*, 130 M 496, 304 P 2d 1107, 1108.

**References**

Cited or applied in *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, 982; *Hansen v. Hansen*, — M —, 329 P 2d 791, 793.

**CHAPTER 82—OFFER OF DEFENDANT TO COMPROMISE****93-8201. (9770) Proceedings on offer of the defendant, etc.****Operation and Effect**

An "offer to do equity" in the answer when not accepted can not be used in evidence nor can it be regarded as an admis-

sion that defendants had waived any of their defenses. *Rachou v. McQuitty*, 125 M 1, 229 P 2d 965.

**CHAPTER 84—MOTIONS AND ORDERS****93-8401. (9772) Order and motion defined.****Denial of Petition for Writ of Prohibition**

Denial of petition for writ of prohibition by district court to restrain justice court from further proceedings in criminal action was an order and not a judgment. *State ex rel. Aho v. Justice Court of Laurel Township*, 131 M 585, 313 P 2d 542, 543.

**Motions**

A motion is not made by merely filing an application in writing with the clerk of the district court, but by the moving of the court or judge viva voce, to grant the order. *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 846.

As a motion is not an action but simply an application for an order it is not subject to the general rules of pleading. *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 846.

Since, ordinarily no question not open on the hearing of the original or main motion is presented for decision by a motion to quash, dismiss, deny or strike from the files or records the original motion or by a demurrer to such original motion, such motion or demurrer is regarded as superfluous, frivolous, confusing and bad practice. *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 846.

**References**

Cited or applied in *State ex rel. Gilreath v. District Court*, 127 M 431, 265 P 2d 651, 654 (dissenting opinion).

Motion in original action as proper remedy to avoid release or satisfaction of judgment. 9 ALR 2d 558, 561.

**93-8402. (9773) Motions and orders—absence of judge.****Orders by a Substituted Judge**

Where a substitute judge is appointed because of the disqualification of the original judge, the substituted judge is competent to make orders and rule on motions until there is a complete disposition of the case as far as the trial court

is concerned. *McLeod v. McLeod*, 126 M 32, 243 P 2d 321.

**References**

Cited or applied in *State ex rel. Gilreath v. District Court*, 127 M 431, 265 P 2d 651, 654 (dissenting opinion).

**93-8403. (9774) Notice of motion—at what time to be given.****References**

Cited or applied in *State ex rel. Gil-*

*reath v. District Court*, 127 M 431, 265 P 2d 651, 654 (dissenting opinion).

**93-8405. (9776) Order made out of court, etc.****Extension of Time for Filing Bill of Exceptions**

If court erroneously made order extending the time to prepare, serve and file bill of exceptions under section 93-5505, it had authority to correct such order under the provisions of this section. *Barcus v. Portland Cattle Co.*, 122 M 534, 207 P 2d 565, 566.

**Objection to Order**

Where order of court on application to perpetuate testimony was complained of the remedy was to apply to the court to vacate or modify the order and not by direct application for certiorari in the supreme court. *State ex rel. Woodard v. District Court*, 120 M 585, 189 P 2d 998, 1001; *State ex rel. Lichte v. District Court*, 121 M 34, 189 P 2d 1004, 1008.

**CHAPTER 85—NOTICES AND FILING AND SERVICE OF PAPERS****93-8502. (9779) When and how served.****Service by Mail**

Where the attorneys for the respondents resided in and maintained their offices in the same place where appellant's attorneys reside, a notice of appeal by mail was insufficient. *Malick v. Peterson*, 124 M 585, 228 P 2d 963.

of summons for each party sought to be served. 8 ALR 2d 343.

What amounts to doing business in a state within statute providing for service of process in action against nonresident, natural person, or persons doing business in state. 10 ALR 2d 200.

Necessity, in service by leaving process at place of abode, etc., of leaving a copy

**93-8503. (9780) Service by mail, when.****Cross-Reference**

See note to sec. 93-8502. *Malick v. Peterson*, 124 M 585, 228 P 2d 963.

**References**

Cited or applied in *Fey v. A A Oil Corp.*, 126 M 552, 255 P 2d 339, 341.

**93-8504. (9781) Service by mail, how.****References**

Cited or applied in *Fey v. A A Oil Corp.*, 126 M 552, 255 P 2d 339, 341.

**93-8505. (9782) Appearance—notice after appearance.****Motion to Strike**

Defendants filing motion to strike portions of plaintiff's complaint made their general appearance in the case. *Johnson v. Clark*, 131 M 454, 311 P 2d 772, 774.

notice of appeal. *Malick v. Peterson*, 124 M 585, 228 P 2d 963.

**References**

Cited in *McLeod v. McLeod*, 124 M 590, 228 P 2d 965.

**Operation and Effect**

Attorneys appearing were entitled to

**93-8506. (9783) Service on nonresidents—where a party, etc.****Operation and Effect**

This section will not permit the constructive service of an order to show cause

on a motion to modify the custody provisions of a divorce decree. *Hand v. Hand*, 131 M 571, 312 P 2d 990, 994.

**93-8507. (9784) Preceding provisions not to apply to proceeding, etc.****References**

Cited or applied in *Hand v. Hand*, 131 M 571, 312 P 2d 990, 994.

**CHAPTER 86—COSTS AND DISBURSEMENTS—COST BILL—SUIT IN FORMA PAUPERIS****93-8601. (9786) Compensation of attorneys—costs to parties.**

**Attorney's Fees Incurred in Condemnation Proceeding for a Private Road of Necessity Not Recoverable**

Attorney's fees incurred in the defense of a condemnation proceeding for a private road of necessity under section 93-9923 are not recoverable as an expense

of such action under this section or section 93-8618. *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 725, 26 ALR 2d 1285.

**References**

Cited in *In re Sikorski's Estate*, 127 M 563, 268 P 2d 395, 399.

**93-8602. (9787) When allowed, of course, to the plaintiff.**

**Subd. 2**

**Operation in General**

In an action in claim and delivery to recover the possession of machinery, where a verdict was directed for plaintiff and plaintiff had failed to offer proof of the value of the machinery, the court should not have made any allowance of costs to the plaintiff. *Key v. Clements*, 133 M 344, 323 P 2d 603, 608.

**Subd. 4**

**Prohibition Cases**

If pleaded, attorney fees are allowable as an item of damages in prohibition cases. *State v. District Court*, 131 M 397, 310 P 2d 779, 782.

**References**

Cited or applied in *Letz v. Letz*, 123 M 494, 215 P 2d 534.

**93-8604. (9789) Costs—when in the discretion of the court.**

Allowance of attorneys' fees in, or other costs of, litigation by beneficiary respecting trust. 9 ALR 2d 1132.

**93-8611. (9796) Costs in a review other than by appeal.**

**Operation and Effect**

Prevailing party in proceeding for review of contempt judgment by writ of

certiorari is entitled to recover its costs in the action. *State ex rel. Porter v. First Judicial Dist.*, 123 M 447, 215 P 2d 279.

**93-8614. (9799) Filing costs and attorney's fees to be recovered, etc.**

**Operation and Effect**

Where a house owner entered into a contract to erect a house in reliance on a lumber company's manager's representations that it was backing the contractor, and where the house owner paid the contractor, the lumber company was not entitled to a lien for materials, and the house owner was entitled to a judgment for the

amount paid above the contract price and for attorney's fees. *Monarch Lumber Co. v. Wallace*, 132 M 163, 314 P 2d 884, 890.

Where the evidence indicated that there was no lien to be foreclosed, as a matter of law, the defendant was allowed attorney's fee. *Thompson v. Cure*, 133 M 273, 322 P 2d 323.

**93-8618. (9802) What are costs and disbursements.**

**What are Allowable Costs**

The reasonable expenses for making a map if required or necessary is a proper cost; hence where a map was prepared, introduced in evidence and much testimony was adduced with reference thereto and at a hearing on a motion to tax the cost, evidence was introduced as to reasonable expenses therefor, it was incumbent upon the opposing party to overcome the prima facie evidence that the amount named in the cost bill was neces-

sarily expended. *Perkins v. Stephens*, 131 M 138, 308 P 2d 620, 624.

**What are Not Allowable Costs**

Attorney's fees incurred in the defense of a condemnation proceeding for a private road of necessity under section 93-9923 are not recoverable as an expense of such action under this section or section 93-8601. *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 725, 726, 26 ALR 2d 1285.

**93-8619. (9803) Bill of costs.**

**Correctness of Memorandum—Burden of Proof**

Verified memorandum is prima facie evidence of correctness of items of disbursements and the burden of overcoming

such prima facie case rests on the adverse party, the party filing the memorandum being required to furnish further proof only in rebuttal. *Letz v. Letz*, 123 M 494, 215 P 2d 534.



**Motion to Strike Memorandum**

Motion to strike plaintiff's memorandum of costs was properly denied where findings of fact and conclusions of law were signed on August 25, 1955, and filed on August 26; judgment was filed September 15; cost bill was served on counsel on September 16, and filed September 19; and notice of entry of judgment was served on September 15, reciting that judgment was entered on that day. *Pattyn v. Favers*, 133 M 560, 327 P 2d 818, 821.

**Timely Filing of Memorandum of Costs**

A cost bill was filed in time where the court made findings of fact and conclusions of law on April 18 and filed them on April 21, the judgment was signed April 28 and filed April 29, and plaintiff filed his memorandum of costs on April 29. *Ballenger v. Tillman*, 133 M 369, 324 P 2d 1045, 1052.

**References**

Cited or applied in *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 724, 26 ALR 2d 1285.

**93-8625. (9809) Poor person may sue without costs.**

Right to sue in forma pauperis as dependent on showing of financial disability

of attorney or other non-party who are non-applicants. 11 ALR 2d 607.

**CHAPTER 87—GENERAL PROVISIONS****93-8702. (9817) Lost papers—how supplied.****Operation and Effect**

This section authorizes the trial judge to proceed with the trial on substituted carbon copies of the papers and pleadings

rather than the original where the original papers and pleadings were missing. *Mortenson v. Mortenson*, 129 M 290, 285 P 2d 834, 835.

**93-8706. (9821) Actions—when deemed pending.****Operation and Effect**

Where company went upon land six days after entry of district court judgment quieting title and expended large sums of money drilling well it acted at its peril where case was thereafter appealed and reversed. *Rieckoff v. Consolidated Gas Co.*, 123 M 555, 217 P 2d 1076, 1080.

This section precisely states when an action is deemed pending. *Wilson v. Wilson*, 128 M 511, 278 P 2d 219, 223.

**References**

Cited in *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 231; *Barbour v. Barbour*, — M —, 330 P 2d 1093, 1096.

**93-8708. (9823) Extension of time.****Application**

It is doubtful whether the legislature intended when it amended section 93-5505 to still have this section operate as a further limitation upon the court in granting extensions of time for a bill of exceptions. *State ex rel. Robbins v. Bonner*, 128 M 45, 270 P 2d 400, 402.

**Notice of Appeal**

This section makes it clear that the time prescribed by law for the serving of notices of appeal may not be extended thereunder for notices of appeal are specifically excluded from the operation of the statute. Thus are the courts denied the authority to extend the maximum time prescribed by statute for the service or filing of a notice of appeal. *State ex rel. Reid v. District Court*, 126 M 489, 255 P 2d 693, 699.

**Operation and Effect**

This section and section 93-5505 are special statutes pertaining to the preparation and extension of time for the service and filing of bills of exceptions, and by the well-established rule of construction in this state, control over general statutes. Thus where a party did not present his bill of exceptions within fifteen days or get an extension of time for presenting the bill of exceptions, he could not rely on section 93-3905 pertaining to a court giving relief to a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 992, 994, 995.

**References**

Cited or applied in *State ex rel. Doyle v. District Court*, 126 M 615, 245 P 2d 382.

**93-8718. (9833) Publication of order, etc., to be made once a week, etc.**

Validity of legislation relating to publication of legal notices. 26 ALR 2d 655.

**CHAPTER 89—UNIFORM DECLARATORY JUDGMENTS ACT****93-8901. (9835.1) Scope.****Application**

If a governmental board delays unreasonably in instituting legal action seeking enforcement of its order and compliance with section 50-435, which requires coal mines to erect washrooms if they have more than 12 employees, the coal mine may institute an action at law for declaratory judgment under section 93-8901 et seq. *Jeffries Coal Co. v. Industrial Accident Board*, 126 M 411, 252 P 2d 1046, 1048.

**Finding of Facts Required**

In order to sustain a declaratory judgment the court must first have made findings of fact upon which the judgment could be based and the findings of fact cannot go outside the issues formulated by the pleadings. *National Surety Corp. v. Kruse*, 121 M 202, 192 P 2d 317, 319.

**General Powers**

The question as to whether property leased to a school district was exempt from taxation was proper to adjudicate in a declaratory judgment proceeding. *Northwestern Improvement Co. v. Rosebud County*, 129 M 412, 288 P 2d 657, 659.

**Operation and Effect**

The judicial power under this act ex-

tends only to actual cases and controversies and not to abstract questions. *Chovanak v. Matthews*, 120 M 520, 188 P 2d 582, 586.

Suits against tax officials based upon the illegality of their action in assessing or collecting taxes are not considered suits against the state, so that it is not necessary for the plaintiff to allege that the state has consented to be sued under the Uniform Declaratory Judgment Act of Montana. *Brophy Coal Co. v. Matthews*, 125 M 212, 233 P 2d 397, 399.

Relief against covenant restricting right to engage in business or profession as subject of declaratory judgment. 10 ALR 2d 743.

Extent to which principles of res judicata are applicable to judgments in actions for declaratory relief. 10 ALR 2d 782.

Tax question as proper subject of action for declaratory judgment. 11 ALR 2d 359.

Declaratory relief with respect to unemployment compensation. 14 ALR 2d 826.

Issue as to negligence as proper subject of declaratory judgment action. 28 ALR 2d 957.

Partnership or joint venture matters as subject of declaratory judgment. 32 ALR 2d 970.

**93-8902. (9835.2) Power to construe, etc.****Persons Entitled to Bring Action**

A decision on the constitutionality of a statute cannot be obtained under the Declaratory Judgment Act by a person who has no interest in the question except that of a "resident, citizen, taxpayer and elector." *Chovanak v. Matthews*, 120 M 520, 188 P 2d 582.

**References**

Cited or applied in *Northwestern Improvement Co. v. Rosebud County*, 129 M 412, 288 P 2d 657, 659.

Relief against covenant restricting right to engage in business or profession as subject of declaratory judgment. 10 ALR 2d 743.

**93-8903. (9835.3) Before breach.****References**

Cited or applied in *Northwestern Im-*

*provement Co. v. Rosebud County*, 129 M 412, 288 P 2d 657, 659.

**93-8904. (9835.4) Declarations concerning administration of trusts, etc.****References**

Cited or applied in *Northwestern Im-*

*provement Co. v. Rosebud County*, 129 M 412, 288 P 2d 657, 659.

**93-8905. (9835.5) Enumeration not exclusive.****Construction**

The question as to whether property leased to a school district was exempt from taxation was proper to adjudicate in

a declaratory judgment proceeding. *Northwestern Improvement Co. v. Rosebud County*, 129 M 412, 288 P 2d 657, 659.

**93-8911. (19835.11) Parties.**

Burden of proof in actions under general declaratory judgment acts. 23 ALR 2d 1243.

**93-8912. (19835.12) Construction.****References**

Cited or applied in Northwestern Im-

provement Co. v. Rosebud County, 129 M 412, 288 P 2d 657, 659.

**CHAPTER 90—CERTIORARI (WRIT OF REVIEW)****93-9001. (19836) Writ of review defined.****Operation and Effect**

Certiorari is an extraordinary remedy and the proceeding under the writ is a special proceeding. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

**Review of Contempt**

The only method to review an adjudica-

tion for contempt is by writ of certiorari. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

**References**

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

**93-9002. (19837) When and by what courts granted.****Grounds for Writ**

The power of a court of review to issue a writ of certiorari is limited and the writ may be granted only when there has been an excess of jurisdiction. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

**Motion to Quash Writ of Review**

On motion to quash a writ the court must accept the allegations of the petition as stating the facts. Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

**Not Available to Correct Errors within Jurisdiction**

The writ of certiorari cannot be employed to correct errors committed in the exercise of jurisdiction. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 766.

**Not Available When Time for Appeal Permitted to Lapse**

The aggrieved party may not permit the time for taking an appeal to lapse and then have the judgment or order against him reviewed and annulled on writ of certiorari. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 766.

**Not Available Where Error may be Reached by Appeal**

District court exceeded its jurisdiction by issuing a writ of review and making orders against the justice of the peace when the record shows that (1) the jus-

tice of the peace was acting within his jurisdiction, (2) that the defendants may appeal to the district court from any judgment entered against them in the justice's court, (3) that on such appeal the cause will be tried anew in the district court, and (4) that such remedies so available to defendants are plain, speedy and adequate. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861.

**Operation and Effect**

Writ of review is not available where the plaintiff simply did not take his appeal within the statutory time of 60 days under section 93-8004. McVay v. McVay, 128 M 31, 270 P 2d 393, 395.

**What Must Be Shown to Obtain This Writ**

To obtain relief by writ of certiorari three essentials must coexist, namely, excess of jurisdiction, absence of right to appeal and lack of a plain, speedy and adequate remedy other than certiorari. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

**When Remedy Is Not Proper**

The writ will not be granted for the correction of merely harmless, technical or formal errors which are not shown to have resulted prejudicially, or to have caused substantial injustice to the relator. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 766.

Where intermediate judgment requiring the payment of alimony pendente lite in



action for divorce was not appealed, it cannot be reviewed and annulled on writ of certiorari after judgment for contempt. *State ex rel. Houtchens v. District Court*, 122 M 76, 199 P 2d 272, 274.

The writ cannot be used to correct errors within jurisdiction. *Application of Banschbach*, 133 M 312, 323 P 2d 1112, 1113.

### 93-9003. (9838) Application for—how made.

#### References

Cited in *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1014.

### 93-9004. (9839) The writ to be directed to the inferior tribunal, etc.

#### References

Cited in *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 765.

### 93-9005. (9840) Contents of the writ.

#### References

Cited in *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 765.

### 93-9008. (9843) The review under the writ, extent of.

#### Excess of Jurisdiction

The power of a court of review to issue a writ of certiorari is limited and the writ may be granted only when there has been an excess of jurisdiction. *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 765.

A writ of certiorari to review judgment of contempt can only be made when there is a showing that the tribunal acted in excess of jurisdiction. *State ex rel. Porter v. First Judicial Dist.*, 123 M 447, 215 P 2d 279.

#### Scope of Review

The hearing in a certiorari proceeding is limited to a review of the record of the inferior tribunal, board or officer for the sole purpose of determining from such record whether the tribunal, board or officer had jurisdiction to do the act, to make the order or to render the judgment of which complaint is made. *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 766.

Existence of jurisdictional facts found by inferior tribunal as subject of inquiry on certiorari. 5 ALR 2d 675.

### 93-9011. (9846) Judgment roll.

#### Operation and Effect

This section must be construed with other statutes relating to appeal and effect given to all as if they were all parts of the same statute. *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1015.

#### Papers in Judgment Roll

While this section sets forth the minimum contents of the judgment roll, it does not follow that only the papers there-

in enumerated may be incorporated in the judgment roll. *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1015.

#### Special Proceeding

When there is an appeal from a final judgment entered in a special proceeding the judgment roll is that described in section 93-5707. *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1015.

## CHAPTER 91—MANDAMUS (WRIT OF MANDATE)

### 93-9101. (9847) Mandate defined.

#### References

Cited or applied in *State ex rel. Reid*

*v. District Court*, 126 M 489, 255 P 2d 693, 704.

### 93-9102. (9848) When and by what court issued.

#### Bridge Repairs

On appeal from a mandamus proceeding

to force state water conservation board to repair and rebuild bridges over ditch,

owned by the board where it crosses city streets, before the Supreme Court could affirm the judgment of the district court it had to be shown that some law enjoined upon board an affirmative duty to repair the bridges in question. State ex rel. Livingston v. State Water Conservation Board, — M —, 332 P 2d 913, 915, 916.

#### General Requisites for Issuance of Writ

The writ lies only when the person seeking it is entitled to have the defendant perform a clear legal duty, and then only when there is no speedy or adequate remedy in the ordinary course of law. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 261, 2 ALR 2d 1050.

#### Inadequate Right of Appeal

The mere existence of a right of appeal, where it is inadequate, does not preclude the issuance of a writ of mandate. State v. State Highway Patrol, 133 M 162, 321 P 2d 612, 614.

#### Mandamus Lies to Compel Calling in of Another Judge

Mandamus is the proper remedy where a district judge fails to call in another district judge after an affidavit of bias has been filed under section 93-901. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

#### Mandamus Lies to Compel Highway Patrol and Officers to Return Motor Vehicle License Plates

An automobile co-owner had the right to a writ of mandamus to regain license plates taken from her automobile by the highway patrol acting under the authority of section 53-422 following an accident of the other co-owner while driving another vehicle. State v. State Highway Patrol, 133 M 162, 321 P 2d 612, 614.

#### Mandamus Lies to Compel Issuance of License

Mandamus will lie to compel issuance

of license for logging trailer under section 53-122. State ex rel. Sharp v. Cross, 123 M 261, 211 P 2d 760.

#### Operation and Effect

Mandamus is properly issued to carry into effect the judgment of the Supreme Court where the district court fails for any reason to execute its mandate from the Supreme Court. State ex rel. Kitchens v. District Court, 130 M 57, 294 P 2d 907, 911.

Where an employee of the state fish and game commission was summarily dismissed by the commission without sufficient notice, he was entitled to relief by way of mandamus; even though, subsequent to the discharge, he was given notice that a hearing on his dismissal would be held. State v. State Fish & Game Comm., 133 M 362, 323 P 2d 1116, 1118.

#### When Mandamus is Not Proper

Where the holder of a registered brand died and thereafter the brand expired without being re-registered, the brand was then open to record by anyone; hence, mandamus brought by the administrator of the deceased person at a later date would not lie to require the recorder of marks and brands to record the brand in the administrator's name as there is no clear legal duty upon the recorder to do what the administrator required by his complaint. Benolken v. Miracle, 129 M 495, 289 P 2d 953, 954.

Requiring successor judge to journalize finding or decision of predecessor. 4 ALR 2d 884.

Mandamus to protect charitable or eleemosynary corporation against use of same or similar name by another corporation. 27 ALR 2d 962.

Mandamus to compel municipal officials to enforce zoning regulations. 35 ALR 2d 1136.

### 93-9104. (1985) Must be either alternative or peremptory—substance.

#### Operation and Effect

Where the liquor control board issued a license in compliance with district court mandate in lieu of applying for superseades from Supreme Court, the question

whether the mandate was proper did not present a justiciable controversy for the Supreme Court, even under section 93-8024. Gill v. Rafn, 133 M 505, 326 P 2d 974.

### 93-9106. (1982) The adverse party must answer under oath.

#### References

Cited or applied in Esterby v. Justice Court of Hellgate Township, 127 M 1,

256 P 2d 544, 546; State ex rel. Adamson v. District Court, 128 M 538, 279 P 2d 691, 692.

### 93-9107. (1983) If an essential question of fact is raised, etc.

#### References

Cited or applied in Esterby v. Justice

Court of Hellgate Township, 127 M 1, 256 P 2d 544, 546.

**93-9111. (9857) If no answer be made, etc.****References**

Cited or applied in State ex rel. Helena

Housing Authority v. City Council of Helena, 125 M 592, 242 P 2d 250, 256.

**93-9112. (9858) Damages, costs and peremptory mandate allowed, etc.****Attorney Fees**

Attorney fees are damages within the meaning of the statute. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1078.

Where counsel for relatrix made several trips to consult with a judge who had been disqualified about calling in another judge and then later instituted mandamus proceedings to compel the appointment of another judge, such expenses of travel is not a proper item of costs incident to the institution of the mandamus proceeding. It was a matter that should have been attended to by letter or telephone. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1079.

Where relator for a writ of mandamus requiring the court to set a case for trial, and return was made, and alternate writ issued, and return and answer showed that the cause had been set for trial, the relator was entitled to recover from the county attorney fees upon the court's finding that the respondents appeared in the action

and made defense in the proceeding in good faith. State ex rel. Haegg v. District Court, 130 M 530, 304 P 2d 1116, 1117.

If pleaded, attorney fees are allowable as an item of damages in prohibition cases. State v. District Court, 131 M 397, 310 P 2d 779, 782.

**Damages and Costs**

Held that where the judge issued the order sought, one day after the relatrix instituted mandamus proceedings to compel the action, the relatrix could still recover reasonable attorneys' fees, costs and damages for instituting and prosecuting the mandamus proceedings. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1079.

**References**

Cited or applied in State ex rel. Miller v. District Court, 130 M 65, 294 P 2d 903, 904; State ex rel. James v. Aronson, 132 M 120, 314 P 2d 849.

**93-9114. (9860) Penalty for disobedience to the writ.****References**

Cited in Gill v. Rafn, 133 M 505, 326 P 2d 974.

**CHAPTER 92—PROHIBITION—WRIT OF****93-9201. (9861) Prohibition defined.****Attorney Fees**

If pleaded, attorney fees are allowable as an item of damages in prohibition cases. State v. District Court, 131 M 397, 310 P 2d 779, 782.

**Habeas Corpus Proceeding**

Where, during the course of a divorce proceeding a judge is disqualified and another judge assumes jurisdiction and commits the husband to jail for contempt, on a habeas corpus petition brought by the jailed husband the disqualified judge would not be authorized to act and a writ of prohibition will lie to prohibit such judge from proceeding further in the habeas corpus matter. State v. District Court of Lewis and Clark County, 130 M 73, 295 P 2d 233.

**Nature of Writ**

If the district court and judge were proceeding within the jurisdiction given them by the Constitution and statutes of

this state, they may not be restrained by this writ out of the Supreme Court. Moreover, even though the district court at some point exceeded its jurisdiction, the writ of prohibition must be denied if the person has another plain, speedy and adequate remedy in the ordinary course of law. State ex rel. Adamson v. District Court, 128 M 462, 279 P 2d 691, 693.

Prohibition does not properly issue as a writ of right, but only in the exercise of a sound judicial discretion to arrest the proceedings of courts, or tribunals or officers exercising judicial functions, but acting at the time without or in excess of its or their jurisdiction. State ex rel. Adamson v. District Court, 128 M 538, 279 P 2d 691, 693.

**Operation and Effect**

Writ of prohibition does not lie against the county superintendent of schools to prevent her from acting in an appeal taken to her by a teacher who had been



denied re-employment by the school board since by section 75-2411 appeals from such dismissals go to the county superintendent of schools. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209.

District court acted in excess of its jurisdiction in summarily issuing an order affecting the right to custody of a child without giving notice and a hearing to the child's mother. State v. District Court, 131 M 397, 310 P 2d 779, 782.

Where an order of the district court, issued without notice and without a hearing, was to deprive a mother of the custody of her child, and there were two modifications of the original custody decree which would require separate appeals, an appeal would not be adequate to protect the best interests of the child, and a writ of prohibition was the proper remedy. State v. District Court, 131 M 397, 310 P 2d 779, 781.

#### When Writ May Be Granted

Refusal of court to set aside indictments on grounds set forth in section 94-6601 may be reviewed on writ of prohibition

under the authority granted the Supreme Court by Const., Art. VIII, sec. 2 giving it superintending control over the courts. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1039.

Supreme Court had jurisdiction to grant writ of prohibition to prevent payment of grand jury illegally in session. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

The writ of prohibition lies when there is no other plain, speedy and adequate remedy at law. State v. District Court, 131 M 397, 310 P 2d 779, 780.

#### Writ May Run to End Litigation and Save Expense

The writ of prohibition may be issued to end litigation and save expense. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052, 1054.

#### References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704; State ex rel. Montana State University v. District Court, 132 M 262, 317 P 2d 309, 313.

### 93-9202. (1982) Where and when issued.

#### Operation and Effect

Where Supreme Court issued an alternate writ of prohibition against a district court judge, and before the return date the district judge conceded that he was disqualified and would take no further part in the case in the district court, the alternate writ will be dissolved as there is no purpose for it. State ex rel. Miller v. District Court, 130 M 65, 294 P 2d 903. (Dissenting opinion, 130 M 65, 294 P 2d 903, 904.)

#### References

Cited or applied in State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 213; State v. District Court of Lewis and Clark County, 130 M 73, 295 P 2d 233, 237; State v. District Court, 131 M 397, 310 P 2d 779, 780; State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542; State ex rel. Montana State University v. District Court, 132 M 262, 317 P 2d 309, 313.

### 93-9204. (1984) Certain provisions of the preceding chapter applicable.

#### Operation and Effect

This section adopts for writs of prohibition most of the statutes governing the practice applicable to writs of mandamus. Esterby v. Justice Court of Hellgate Township, 127 M 1, 256 P 2d 544, 546.

#### Pleading of Damages and Attorney Fees

The first condition to the recovery of damages and attorney fees is that they be claimed in the pleading. If they are not claimed in the pleading they are waived.

State ex rel. Miller v. District Court, 130 M 65, 294 P 2d 903, 904.

If pleaded, attorney fees are allowable as an item of damages in prohibition cases. State v. District Court, 131 M 397, 310 P 2d 779, 782.

#### References

Cited or applied in State ex rel. Adamson v. District Court, 128 M 538, 279 P 2d 691, 692.

## CHAPTER 94—CONFESSION OF JUDGMENT WITHOUT ACTION

### 93-9401. (1986) Judgment may be confessed for debt due, etc.

Res judicata as affected by fact that former judgment was entered by agreement or consent. 2 ALR 2d 514.

What law governs validity of warrant or power of attorney to confess judgment. 19 ALR 2d 544.

## CHAPTER 97—FORCIBLE ENTRY AND UNLAWFUL DETAINER—ACTIONS FOR

### 93-9701. (9887) Forcible entry defined.

#### Operation in General

Where the right to possession of real property is in dispute, the owners thereof may not take the law into their own hands and proceed by violence to take possession thereof. In order to secure such possession, resort must be had to the

peaceful process of law. *Brown v. Grenz*, 127 M 49, 257 P 2d 246, 248.

Forcible entry and detainer as a remedy of tenant against stranger wrongfully interfering with his possession. 12 ALR 2d 1199.

### 93-9703. (9889) Unlawful detainer defined.

#### Action after Giving Notice

Where owner, after giving notice under this section, commenced a course of action and conduct which forced the tenant from the premises, instead of filing a complaint as provided by section 93-9708, he was liable for wrongful eviction. *Brown v. Grenz*, 127 M 49, 257 P 2d 246.

#### Change in Use of Building

Change in the use of a building by sublessee from a retail food store to a motor sales and garage did not amount to waste or destruction of building. *Turman v. Safeway Stores, Inc.*, 132 M 273, 317 P 2d 302, 304, 307.

#### Notice to Quit

Whether notice that deal with regard to the sale of land was off and that if there was any further desire to buy or lease land they should see the party appointed to act as agent for the owner was a notice to quit, was a question for the jury. *Hamilton v. Rock*, 121 M 245, 191 P 2d 663, 666.

### 93-9705. (9891) What courts have jurisdiction.

#### References

Cited or applied in *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 999. \*

### 93-9706. (9892) Parties defendant.

#### Operation and Effect

Nothing in this section denies to any defendant in any action brought under this chapter the permissive right accorded by section 93-3415 to any defendant to file a cross-complaint, and therefore, un-

der section 93-9707 which incorporates provisions of sections 93-2301 to 93-8718 relating to parties, the provisions of section 93-3415 are applicable. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 998.

### 93-9707. (9893) Parties generally.

#### Operation and Effect

This section and section 93-9718 specifically make certain designated sections of the Code of Civil Procedure, which includes 93-3415, applicable to proceedings

for forcible entry and unlawful detainer and authorize a defendant therein to file a cross-complaint. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 995, 998.

### 93-9708. (9894) Complaint—judge to fix day for appearance, etc.

#### References

Cited in *State ex rel. Sullivan v. District Court*, 122 M 1, 196 P 2d 452, 453;

*Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 997; *Brown v. Grenz*, 127 M 49, 257 P 2d 246.

### 93-9711. (9897) Defendant may appear, etc.

#### References

Cited or applied in *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 997.

**93-9714. (9900) Complaint must be amended in certain cases.**

**References**

Cited or applied in *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 997.

**93-9716. (9902) Verification of complaint and answer.**

**References**

Cited or applied in *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 995, 997, 998.

**93-9718. (9904) Rules of practice.**

**Operation and Effect**

This section and section 93-9707 specifically make certain designated sections of the Code of Civil Procedure, which includes 93-3415, applicable to proceedings

for forcible entry and unlawful detainer and authorize a defendant therein to file a cross-complaint. *Hutchinson v. Burton*, 126 M 279, 247 P 2d 987, 995, 997, 998.

**93-9720. (9906) Relief against forfeiture of lease.**

**References**

Cited or applied in *Davis v. Burton*, 128 M 434, 278 P 2d 213, 218.

CHAPTER 98—CONTEMPTS

**93-9801. (9908) What acts or omissions are contempts.**

**References**

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974.

Enforcement of contract by party to procure insurance on his own life by contempt proceedings. 12 ALR 2d 983.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous. 12 ALR 2d 1059.

Punishment of civil contempt in other than divorce cases by striking, pleading or entering default judgment for dismissal against contemner. 14 ALR 2d 580.

Procuring perjury as contempt. 29 ALR 2d 1157.

Bail jumping after conviction, failure to surrender or to appear for sentencing and the like, as contempt. 34 ALR 2d 1100.

**93-9803. (9910) A contempt committed in the presence of the court, etc.**

**Contemptuous Pleading**

The filing of a complaint in a civil action containing immaterial and irrelevant allegations of scandalous and defamatory matter concerning the lives and characters of the members of the grand jury constituted contempt. *State ex rel. Porter v. First Judicial Dist.*, 123 M 447, 215 P 2d 279.

Where contempt was based on scandalous and defamatory allegations in pleading, which allegations were immaterial and irrelevant, the truth or falsity of the allegations is immaterial. *State ex rel. Porter v. First Judicial Dist.*, 123 M 447, 215 P 2d 279.

**Sufficiency of Affidavit Charging Contempt**

County attorney's accusatory affidavit

was not insufficient because made on information and belief. *State ex rel. Porter v. First Judicial Dist.*, 123 M 447, 215 P 2d 279.

County attorney's accusatory affidavit specifically charging that the accused filed a complaint containing false, malicious, untrue, libelous, defamatory and contemptuous matter concerning members of the grand jury and its prosecutor and that such a filing constituted contempt was sufficient. *State ex rel. Porter v. First Judicial Dist.*, 123 M 447, 215 P 2d 279.

Privilege against self incrimination as to testimony before grand jury as affecting contempt proceedings. 38 ALR 2d 239.

**93-9809. (9916) Hearing.**

**Proof**

In action for contempt for failure to

pay alimony pendente lite it is not necessary for the wife to show the husband's



ability to pay, but lack of ability to perform is a defense to be advanced and to be proved by the accused. State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 274.

Where orders of court ordering payment of alimony pendente lite and support

money and finding of ability to pay were not appealed, and there was substantial evidence in the record tending to establish ability to pay, court had jurisdiction to sentence for contempt. State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 274.

### 93-9810. (1917) Judgment and penalty, if guilty.

#### Fine Enforced by Imprisonment

It is well settled in this jurisdiction that the payment of a fine imposed upon one adjudged guilty of contempt may be enforced by imprisonment and that imprisonment in excess of five days is permissible to compel such payment. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 767.

#### Purge Order

A purge order contained in a judgment for contempt is not coercive and beyond the jurisdiction of the court, they being for the defendant's benefit. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 768.

#### Suspension of Execution

Contempt order containing provision for the suspension of execution if monthly payments are made "each month after the present month, the execution of the judgment will continue to be suspended, and this for the period of one year; and if the payments have been continued for twelve of such calendar months then the execution of such judgment will be continued indefinitely," was not a judgment for an indefinite period of time but twelve months was fixed as the maximum of the coercive effect. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 769.

### 93-9811. (1918) If the contempt is the omission, etc.

#### Alimony—Failure to Pay

A person may be sentenced for contempt under this section for failure to pay alimony pendente lite although he has no money and no income, where it is shown that the defendant has the ability to obtain such funds by his labor. State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 275.

#### Imprisonment

A person who refuses to perform a judicial order which he is able to perform may be imprisoned until he complies with such order. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 768.

### 93-9814. (1921) Judgment and orders in such cases final.

#### Operation and Effect

The writ of certiorari is discretionary and is only granted when there has been a showing that tribunal making the judg-

ment of contempt acted in excess of jurisdiction. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

## CHAPTER 99—EMINENT DOMAIN

Section 93-9902. What are public uses.

93-9903. What estates in lands may be acquired by condemnation.

93-9903.1. Appropriation of underground natural gas reservoir—effect on landowner's right to drill.

93-9908. The complaint and its contents.

93-9909. Summons, what to contain—how issued and served.

93-9911. Power of court to appoint commissioners, etc.

93-9913. The date with respect to which compensation shall be assessed, and the measure thereof.

### 93-9901. (1933) Eminent domain defined.

#### References

Cited in State v. Peterson, — M —, 328 P 2d 617, 627.

**93-9902. (1934) What are public uses.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, or town, or school districts; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water.
5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.
6. Private roads leading from highways to residences or farms.
7. Telephone or electric light lines.
8. Telegraph lines.
9. Sewerage of any city, county, or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten (10) families, or of any public buildings belonging to the state, or to any college or university.
10. Tramway lines.
11. Electric power lines.
12. Logging railways.
13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways, for such time as the court or judge may determine; provided, the grounds of state institutions be excepted.
14. Underground reservoirs suitable for storage of natural gas.

**History:** En. Sec. 580, p. 189, L. 1877; Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. re-en. Sec. 580, 1st Div. Rev. Stat. 1879; 1955. Cal. C. Civ. Proc. Sec. 1238.  
 re-en. Sec. 598, 1st Div. Comp. Stat. 1887;  
 amd. Sec. 2211, C. Civ. Proc. 1895; amd.  
 Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch.  
 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en.  
 Sec. 9934, R. C. M. 1921; amd. Sec. 1,

#### Compiler's Note

Sections 1 to 5 of Ch. 259, Laws 1955 are compiled as secs. 60-801 to 60-805.

**Amendments**

The 1953 amendment added subsection 14.

The 1955 amendment substituted present subd. 14 for one that read "Underground barren reservoirs suitable for storage of natural gas, except that this subsection 14 shall only apply to a sand stratum or formation known to be suitable for use as an underground gas storage reservoir."

**References**

Cited or applied in *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 724, 725, 26 ALR 2d 1285; *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

Damage to private property caused by negligence of governmental agents as "tak-

ing," "damage" or "use" for public purposes in constitutional sense. 2 ALR 2d 707.

Off-street public parking facilities. 8 ALR 2d 394.

Constitutionality of reforestation or forest conservation legislation. 13 ALR 2d 1095.

Condemnation of another railroad's property for purposes of spur track and the like. 35 ALR 2d 1340.

Condemnor's acquisition of, or right to, minerals under land in eminent domain for highway purposes. 36 ALR 2d 1425.

Compulsory polling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, as taking private property for private use. 37 ALR 2d 439.

**93-9903. (9935) What estates in lands may be acquired by condemnation.** The following is a classification of the estates and rights in lands subject to be taken for the public use:

1. Such estate or rights as may be necessary up to and including a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs or dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or for the underground storage of natural gas by a natural gas public utility as defined in this act. When the appropriation is for the underground storage of natural gas, all of the right, title, interest and estate in the real property and in the subsand stratum, formation or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of one year of the use for which the same was appropriated and thereupon, the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of land, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

**History:** En. Sec. 581, p. 190, L. 1877; re-en. Sec. 581, 1st Div. Rev. Stat. 1879; re-en. Sec. 599, 1st Div. Comp. Stat. 1887; re-en. Sec. 2212, C. Civ. Proc. 1895; re-en. Sec. 7332, Rev. C. 1907; re-en. Sec. 9935, R. C. M. 1921; amd. Sec. 1, Ch. 158, L. 1943; amd. Sec. 2, Ch. 245, L. 1953; amd. Sec. 7, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1239.

**Amendments**

The 1953 amendment in subsection 1 inserted the words "other than underground reservoirs provided for in subsection 14 of section 1 of this act."

The 1955 amendment deleted what was added by the 1953 amendment and added that part of subd. 1 beginning with the words "or for the underground storage \* \* \*,"

**Compiler's Note**

Sections 3 and 4 of Ch. 245, Laws 1953 are compiled as secs. 93-9908, 93-9911.

**93-9903.1. Appropriation of underground natural gas reservoir—effect on landowner's right to drill.** The appropriation of any sand, stratum or formation for use as an underground natural gas storage reservoir shall be



without prejudice to the rights of the owner or owners of said lands, or of the oil, gas or other mineral rights therein, to drill or bore through the sand, stratum or formation so appropriated for use as an underground natural gas storage reservoir, in order to explore for, produce, process, treat or market any oil, gas or other minerals that might be contained in said lands above or below the sands, stratum or formation so appropriated. Any additional cost or expense required to be incurred in order to protect the underground gas storage reservoir against pollution and the escape of the gas therefrom, by reason of such boring or drilling through of the sand, stratum or formation used as such underground gas storage reservoir shall be paid by the persons, firm or corporation then owning such underground gas storage reservoir.

**History:** En. Sec. 5, Ch. 245, Laws 1953.

#### **Separability Clause**

Section 6 of Ch. 245, Laws 1953 read: "If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or

parts thereof would be declared unconstitutional."

#### **Repealing Clause**

Section 7 of Ch. 245, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Condemnor's acquisition of, or right to, minerals under land taken in eminent domain. 36 ALR 2d 1424.

### **93-9904. (9936) Private property defined—classes enumerated.**

#### **Subd. 4**

##### Highways

Under section 32-1615 the state highway commission is the only tribunal authorized to condemn land for relocating highways, and even assuming that the taking of an existing highway is justified by this section as a more necessary public use where the purpose is to build a dam and a reservoir; yet the public

utility building the dam cannot acquire land for relocating the highway since that function is exclusively within the power of the highway commission. State ex rel. Bartholomew v. District Court, 126 M 183, 248 P 2d 215, 216.

#### **References**

Cited or applied in Tomten v. Thomas, 125 M 159, 232 P 2d 723, 724, 26 ALR 2d 1285.

### **93-9905. (9937) Facts necessary to be found before condemnation.**

#### **Appeals from Findings of Fact and Conclusions of Law**

Since this section allows appeals from any finding or judgment made or rendered under this chapter, as in other cases and section 93-8003 allows appeals from final judgments or orders, an appeal does not lie from the court's finding of fact or conclusions of law. Sheridan County Elec-

tric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889. (See, however, dissenting opinion, 127 M 71, 257 P 2d 889, 894.)

#### **References**

Cited or applied in Tomten v. Thomas, 125 M 159, 232 P 2d 723, 724, 26 ALR 2d 1285.

**93-9908. (9940) The complaint and its contents.** The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.
2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.
3. A statement of the right of plaintiff.
4. If a right-of-way is sought, the complaint must show the location, gen-

eral route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement, or town, or a county, the county commissioners of the county may be named as plaintiff.

6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the state oil and gas conservation commission as set forth in section 4 [93-804] of this act.

**History:** En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R. C. M. 1921; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1244.

#### Amendments

The 1953 amendment substituted "is" for "be" at the beginning of subdivision 4; and added subdivision 6.

The 1955 amendment near the beginning of subd. 6 deleted the words "known to be" which appeared between the words "formation" and "suitable" and at the end of subd. 6 substituted "as set forth in section 4 of this act" for "setting forth its findings as to the existence of all of the facts contained in this paragraph."

Propriety of pleading of promissory statements of condemner as to character and use or undertakings to be performed by it. 7 ALR 2d 381.

**93-9909. (9941) Summons, what to contain—how issued and served.** The clerk must issue a summons, which must contain the names of the parties, a description of the lands and other property proposed to be taken, a statement of the public use for which it is sought, and a notice to the defendants to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned as prayed for in the complaint. Such summons must, in other particulars, be in form of a summons in a civil action, and must be served in like manner upon each defendant named therein, at least ten (10) days previous to the time designated in such notice for the hearing, and no copy of the complaint need be served. But the failure to make such service

upon a defendant does not affect the right to proceed against any or all other of the defendants, upon whom service of summons had been made.

**History:** En. Sec. 587, p. 192, L. 1877; R. C. M. 1921; amd. Sec. 9, Ch. 259, L. re-en. Sec. 587, 1st Div. Rev. Stat. 1879; 1955. Cal. C. Civ. Proc. Sec. 1245.  
amd. Sec. 605, 1st Div. Comp. Stat. 1887;  
amd. Sec. 2218, C. Civ. Proc. 1895; re-en.  
Sec. 7338, Rev. C. 1907; re-en. Sec. 9941,

#### Amendment

The 1955 amendment inserted the words "and other property" in this section.

**93-9911. (9943) Power of court to appoint commissioners, etc.** The court or judge has power:

1. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in subdivision 5, section 93-9904, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

2. To determine whether or not the use for which the property is sought to be appropriated is a public use, within the meaning of the laws of this state;

3. To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary;

4. If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three (3) competent persons, resident in said county, commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner, or other person interested in such property, as damages, by reason of the appropriation of such property, and specify the time and place of the first meeting of such commissioners, and fixing their compensation. Any party may object to the appointment of any person as a commissioner on the same grounds that he might object to him as a trial juror.

5. If the property sought to be appropriated is a sand, stratum or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners so appointed to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir, and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the said underground gas storage reservoir, and for use in connection with the creation, operation and maintenance thereof, and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property; provided, however, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas.

The court shall appoint three (3) persons, qualified as experts and recommended as such by the oil and gas conservation commission of the state of Montana, to assist and advise the commissioners in determining the com-



compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

**History:** Ap. p. Sec. 589, p. 193, L. 1877; re-en. Sec. 589, 1st Div. Rev. Stat. 1879; re-en. Sec. 607, 1st Div. Comp. Stat. 1887; amd. Sec. 2220, C. Civ. Proc. 1895; re-en. Sec. 7340, Rev. C. 1907; re-en. Sec. 9943, R. C. M. 1921; amd. Sec. 4, Ch. 245, L. 1953; amd. Sec. 10, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1247.

#### Compiler's Note

Section 5 of Ch. 245, Laws 1953 is compiled as sec. 93-9903-1.

#### Amendments

The 1953 amendment added subdivision 5.

The 1955 amendment in the first paragraph of subd. 5, substituted "each person for his interest" for "each owner or other person interested"; inserted the words "and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the said underground gas storage

reservoir"; inserted the words "and for all the native gas contained in said reservoir"; added the proviso in that paragraph and in the second paragraph of subd. 5 substituted "each person for his interest" for "each owner, or other person interested."

#### Separability Clause

Section 11 of Ch. 259, Laws 1955 read "Constitutionality. If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional."

#### Repealing Clause

Section 12 of Ch. 259, Laws 1955 repealed all acts and parts of acts in conflict therewith.

### 93-9912. (9944) Meeting of commissioners.

#### Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by section 14, article III, of the Montana Constitution. State v. Peterson, — M —, 328 P 2d 617, 620.

#### Removal of Fixtures

In proceedings to condemn tract of land for new highway which would leave defendant's business on old highway, testimony concerning removal of gas tanks was wholly incompetent. Landowner was not required to remove his buildings or fixtures from the land taken and accept an amount of money to defray costs of re-

moval. State v. Peterson, — M —, 328 P 2d 617, 624.

#### Valuation of Property

Testimony of right-of-way agents who had been engaged in the process of appraising real estate for some time all over the state, and had extensive experience in and knowledge of real estate values in community and elsewhere, should have been admitted by court to establish value of property taken by plaintiff for new highway. State v. Peterson, — M —, 328 P 2d 617, 623.

Admissibility in condemnation proceedings of opinion evidence as to probable profits derivable from land condemned if devoted to particular agricultural purposes. 16 ALR 2d 1113.

**93-9913. (9945) The date with respect to which compensation shall be assessed, and the measure thereof.** For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation of all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, and the cost of removal of all necessary personal property from the condemned real property and of the damage to such personal property, if any, incurred by such removal. If an order be made letting the plaintiff into

possession, as provided in section 93-9920, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or damages.

**History:** En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1957. Cal. Civ. Proc. Sec. 1249.

#### **Amendment**

The 1957 amendment added to the first sentence the words "and the cost of removal of all necessary personal property from the condemned real property and of the damage to such personal property, if any, incurred by such removal."

#### **Repealing Clause**

Section 2 of Ch. 133, Laws 1957 repealed all acts and parts of acts in conflict therewith.

#### **Actual Value**

"Actual value" as used in this section means market value. *State v. Peterson*, — M —, 328 P 2d 617, 627.

#### **Improvements**

"Improvements" upon property are a

part thereof. *State v. Peterson*, — M —, 328 P 2d 617, 627.

#### **Market Value**

Evidence may be introduced as to the various uses to which the property is adapted, even though it has never been put to such use in fact. *State v. Peterson*, — M —, 328 P 2d 617, 627.

In attempting to ascertain market value, the location of the land, the character of the neighborhood, and all things surrounding the property may be shown. *State v. Peterson*, — M —, 328 P 2d 617, 627.

Unity or contiguity of properties essential to allowance of damages in eminent domain proceedings on account of remaining property. 6 ALR 2d 1193.

New or additional compensation for use by municipality or public of subsurface of street or highway for purposes other than sewers, pipes, conduits for wires, and the like. 11 ALR 2d 180.

Conditions imposed to approval of proposed subdivision map or plat as constituting taking of property for public use without compensation. 11 ALR 2d 532.

### **93-9919. (9951) Final order of condemnation—what to contain, etc.**

Condemnor's waiver, surrender or limitation, after award, of rights or part of property acquired by condemnation. 5 ALR 2d 724.

Quotient condemnation report or award by the commissioners or the like. 39 ALR 2d 1208.

### **93-9921. (9953) Costs, allowance and apportionment of.**

Relinquishment of part of land or incorporeal rights therein as affecting costs. 5 ALR 2d 739.

Liability of condemnor in eminent domain proceedings for fees of expert witnesses who testified for property owner. 18 ALR 2d 1225.

### **93-9922. (9954) Rules of practice.**

#### **Findings of Fact and Conclusions of Law**

Where United States district court did not make findings of fact and state conclusions of law before entry of judgment, case was remanded with directions to make such findings of fact and state conclusions of law. *Dawson County v. Hagen*, 172 F 2d 387.

#### **Operation and Effect**

Under this section, the provisions of sections 93-8601 and 93-8618 are made

applicable to condemnation proceedings for a private road of necessity and therefore attorney's fees are not includable as an expense under 93-9923. *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 725, 26 ALR 2d 1285.

#### **Right to Open and Close**

The party upon whom the burden of proof rests is entitled to open and close. *State v. Peterson*, — M —, 328 P 2d 617, 629.

**93-9923. (9955) Private roads.****Expenses of Action**

Attorney's fees are not allowed as an expense of a proceeding in condemnation for a private road of necessity under this section or section 32-1401. Section 93-9922 adopts sections 93-8601 and 93-8618 to the proceedings. Under 93-8601 attorney's fees in condemnation proceedings are not enumerated, nor are they allowed under 93-8618 as a cost or disbursement less specifically authorized by law or is according to the course and custom of the court. In Montana it is not customary to include attorney's fees as a cost; and in

this section and 32-1401 the term "expenses" is synonymous with the term "costs." *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 725, 26 ALR 2d 1285.

**Rights of Way of Necessity**

There are no implied grants or reservations of rights of way of necessity in Montana. Property for roads must be condemned. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323; *Violet v. Martin*, 62 M 335, 205 P 221.

**93-9925. (9957) Temporary logging roads.****References**

Cited in *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

**CHAPTER 201—ARBITRATION—SUBMISSION TO****93-201-6. (9977) Award to be in writing—when judgment to be entered.**

Quotient arbitration award or appraisal.  
20 ALR 2d 958.

**93-201-7. (9978) Award may be vacated in certain cases.****Honest Effort by Arbitrators**

Heating and plumbing contractor was entitled to enforcement of report of arbitrators against school district where arbitrators made a sincere, honest and industrious effort to render a fair and just award. *Hopkins v. School District No. 40*,

*Missoula County*, 133 M 530, 327 P 2d 395, 398.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award. 27 ALR 2d 1160.  
Loss of right to arbitration through laches. 37 ALR 2d 1125.

**93-201-8. (9979) Court may, on motion, modify or correct the award.****References**

Cited in *Hopkins v. School District No.*

40, *Missoula County*, 133 M 530, 327 P 2d 395, 399.

**CHAPTER 301—EVIDENCE—DEFINITIONS—KINDS AND DEGREES OF****93-301-1. (10488) Definition of evidence.****Bloodhound Testimony**

In this state, so-called "bloodhound testimony" is incompetent and inadmissible

on the trial of any person accused of a crime. *State v. Storm*, 125 M 346, 238 P 2d 1161 (two justices dissenting).

**93-301-4. (10491) The degree of proof required to establish facts.****Degree of Proof**

The law does not require demonstration. It does not require such a degree of proof as, excluding possibility of error, produces absolute certainty, because such proof is rarely possible. Moral certainty is only required, or that degree of proof which produces conviction in an unprejudiced mind. *State v. Reid*, 127 M 552, 267 P 2d 986, 990.

**Operation and Effect**

In a prosecution for the crime of carrying a concealed weapon, wherein the defendant was found guilty by a jury, it was held on appeal that in view of the uncertainty in the mind of the state's only eyewitness as compared with witnesses for defendant, coupled with the effect of this section and section 94-7203, the evidence was not sufficient to justify a conviction



for the crime charged. *State v. Gilbert*, 125 M 104, 232 P 2d 338, 341.

#### References

Cited or applied in *Gaffney v. Industrial Accident Board of Montana*, 129 M 394, 287 P 2d 256, 261.

### 93-301-5. (10492) Four kinds of evidence specified.

Mode of proof of testimony given at former examination, hearing or trial. 11 ALR 2d 30.

### 93-301-6. (10493) Several degrees of evidence specified.

#### Bloodhound Testimony

In this state, so-called "bloodhound testimony" is incompetent and inadmissible

on the trial of any person accused of a crime. *State v. Storm*, 125 M 346, 238 P 2d 1161 (two justices dissenting).

### 93-301-7. (10494) Primary evidence defined.

#### References

Cited or applied in *Cottingham v. Doyle*, 122 M 301, 202 P 2d 533.

### 93-301-10. (10497) Indirect evidence defined.

#### References

Cited or applied in *Gaffney v. Industrial Accident Board of Montana*, 129 M 394, 287 P 2d 256, 261.

### 93-301-11. (10498) Prima facie evidence defined.

#### References

Cited or applied in *Whitney v. Northwest Greyhound Lines*, 125 M 528, 242 P 2d 257, 270 (dissenting opinion).

Prima facie case where goods stored in situation governed by Uniform Warehouse Receipts Act are stolen, or are damaged or lost by fire or water. 13 ALR 2d 681.

### 93-301-13. (10500) Satisfactory evidence defined.

#### References

Cited or applied in *State v. Simon*, 126

M 218, 247 P 2d 481, 485 (dissenting opinion).

### 93-301-17. (10504) Corroborative evidence defined.

Divorce: Necessity and sufficiency of corroboration of plaintiff's testimony re-

garding ground for divorce. 15 ALR 2d 170.

## CHAPTER 401—EVIDENCE—GENERAL PRINCIPLES OF

### 93-401-1. (10505) One witness sufficient to prove a fact.

#### Conflicting Evidence

Where there is any substantial evidence to support the findings of the trial court, even though the evidence is conflicting the supreme court will not interfere with the judgment and findings of the trial court. *Hankins v. Waitt*, 120 M 596, 189 P 2d 666, 667.

#### Operation and Effect

In deciding the facts of a case the trial judge could accept "the direct evidence of one witness who is entitled to full

credit" to prove any fact and he was not bound to decide the facts in conformity with the declarations of any number of witnesses, who did not produce conviction in his mind, against a less number, or against a presumption or other evidence satisfying his mind. *Davis v. Burton*, 128 M 134, 278 P 2d 213, 218.

#### References

Cited or applied in *Whorley v. Koss*, 122 M 446, 206 P 2d 809, 811.

### 93-401-2. (10506) Testimony confined to personal knowledge.

Report by physician taking or interpreting X-ray pictures. 6 ALR 2d 406.

Written recitals or statements as within rule excluding hearsay. 10 ALR 2d 1035.

**93-401-4. (10508) Witness presumed to speak the truth.****Construction**

It was error for the trial court to allow the testimony of a witness at the first trial to be read into evidence at the second trial of the defendant. It was the right of the defendant to have the jury see and observe the witness upon the witness stand. It was his right that the jury see how the witness acted while under direct and cross-examination. It was his right to have the jury judge the credibility of the witness from his appearance and manner while upon the witness stand. None of these rights could be had except and unless the witness met the defendant "face to face" in the presence of the jury during the course of the trial. *State v. Storm*, 127 M 414, 265 P 2d 971, 973. (See, however, the dissenting opinion in 127 M 414, 265 P 2d 971, 975.)

Cases which permit testimony, given by a witness in a first trial, to be read into evidence in a second trial, in the absence of such witness, are based upon the theory that the accused has been present when the witness gave the testimony in the first trial and had the opportunity of then cross-examining such witness. Such cases proceed upon the theory that the observation by the jury of the manner and demeanor of the witness is no essential part of the right of a defendant to

meet the witness face to face. Montana subscribes to no such theory. To do so would be to make this section a useless and meaningless thing and would deny the defendant the right to meet the witness against him face to face, a right guaranteed him by Art. III, sec. 16 of the state Constitution. *State v. Pivaler*, 127 M 427, 265 P 2d 969, 970. (See, however, the dissenting opinion in 127 M 427, 265 P 2d 969, 970.)

On a second trial of a defendant the testimony of a state witness given at the first trial could not be read into evidence at the second trial since to do so would be to deprive the defendant of his right to meet a witness face to face. *State v. Pivaler*, 127 M 427, 265 P 2d 969, 970. (See, however, the dissenting opinion in 127 M 427, 265 P 2d 969, 970.)

**Operation and Effect**

Where there is ample substantial evidence to sustain a jury's verdict the supreme court will not disturb it. *Roberts State Bank v. O'Rourke*, 121 M 228, 191 P 2d 321.

**References**

Cited in *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1041.

**93-401-7. (10511) Declarations which are a part of the transaction.****Admission Against Interest**

Where statements made by defendant tended to incriminate him they were admissible under section 93-401-27 as statements against interest regardless whether or not they were part of the *res gestae*. *State v. Allison*, 122 M 120, 199 P 2d 279, 293.

**Operation and Effect**

In a prosecution for the crime against nature, it was error to permit the mother of the prosecuting witness to testify as to details of the crime as related by him when he complained to her, where there was no showing that the statement was made while in shock or immediately after

the crime. *State v. Shambo*, 133 M 305, 322 P 2d 657.

In a prosecution for the crime against nature, the person to whom the complaint was made could testify to that fact and state the time, place and circumstances under which it was made but not what was said concerning the details of the crime. *State v. Shambo*, 133 M 305, 322 P 2d 657, 659.

Inability of person making utterance to recollect and narrate facts to which it relates as affecting its admissibility as part of *res gestae*. 7 ALR 2d 1324.

**93-401-10. (10514) Declaration of decedent evidence, etc.****References**

Cited or applied in *Snook v. Blank*, 92 F Supp 518, 519; *Hjermstad v. Barkuloo*, 128 M 88, 270 P 2d 1112, 1118.

Admissibility of statement accepting responsibility for accident as affected by reference to liability insurance. 4 ALR 2d 781.

**93-401-12. (10516) Contents of writing—how proved.****Subd. 5****Operation and Effect**

The receiving in evidence of exhibits of

one of the counsel of plaintiff which contained figures taken from the books of account kept by plaintiff from which computation was made of the loss of profits

to plaintiff by reason of defendant's negligence was proper. *McCollum v. O'Neil*, 128 M 584, 281 P 2d 493.

The use of memoranda containing computations made from records is proper. This method of getting before the jury the result of the examination of books of account and records is to be commended. *McCollum v. O'Neil*, 128 M 584, 281 P 2d 493, 497.

#### In General

This section does not authorize the introduction of parol evidence to show the execution of a deed where the entire deed

is in evidence including the printed lines for the signature of the party executing the instrument and also the lines for the notary but no signatures appear thereon and the paper gives no evidence that any signatures ever appeared thereon, although plaintiff claimed that the signatures disappeared while the deed was in the ground for a period of nine years. *Miller v. Miller*, 121 M 55, 190 P 2d 72, 74.

#### References

Cited or applied in *Cottingham v. Doyle*, 122 M 301, 202 P 2d 533.

### 93-401-13. (10517) An agreement reduced to writing deemed the whole.

#### Extension of Time—Oral Testimony

Where escrow agreement in connection with sale of land required \$700 to be paid by a certain date, oral evidence could not be received to show that there had been an extension of time. *Herman v. Herman*, 123 M 39, 207 P 2d 1155, 1157.

#### Reservation of Mineral Interest

In action for specific performance arising over interpretation of contract for conveyance of land reserving mineral interest, where cross-complaint of defendants alleged that the contract was ambiguous and uncertain and prayed for a declaratory judgment to adjudicate the rights of the parties, it was the duty of the trial court to determine the intent of

the parties, and the exclusion of parol evidence of intent was error. *Stokes v. Tut-tet*, — M —, 328 P 2d 1096, 1103, 1104.

#### References

Cited or applied in *Potlatch Oil & Refining Co. v. Ohio Oil Co.*, 96 F Supp 685, 689.

Applicability and effective parol evidence rule as determinable upon the pleadings. 10 ALR 2d 720.

Parol evidence rule as applicable to agreement not to engage in competition with a business sold. 11 ALR 2d 1227.

Parol evidence to show duration of written contract for support or maintenance. 14 ALR 2d 897.

### 93-401-15. (10519) Construction of statutes and instruments, etc.

#### Addition of Omitted Matter

Supreme Court is not at liberty to so amend a statute as passed by the legislature and approved by the governor. It must determine the plain meaning of the words used and is not at liberty to add in the statute what has been omitted. In re *Coleman's Estate*, 132 M 339, 317 P 2d 880, 882.

#### Operation and Effect

In construing section 93-901 relating to the disqualification of a judge for bias or prejudice, by the filing of an affidavit, the court may not insert therein any "withdrawal" provisions. In re *Woodside-Florence Irr. Dist.*, 121 M 346, 194 P 2d 241, 245.

A judge should not read the words "grand jury" into section 94-2423 which provides immunity from prosecution to persons testifying before any "court or magistrate." *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1023.

This section was enacted to guard against judicial legislation and the usurpa-

tion of legislative functions. *Wilson v. Wilson*, 128 M 511, 278 P 2d 219, 224.

The court could not add to the tax statutes a provision granting a special tax status to breeding animals. In re *Armstrong's Estate*, 133 M 328, 323 P 2d 596, 597.

#### References

Cited or applied in *Lindee v. Liquor Control Board*, 122 M 549, 207 P 2d 947; *State v. Coloff*, 125 M 31, 231 P 2d 343, 346; *Bond v. Birk*, 126 M 250, 247 P 2d 199, 206; *Tabor v. Industrial Acc. Fund*, 126 M 240, 247 P 2d 472, 477 (dissenting opinion); *Sheridan County Electric Co-op. v. Montana-Dakota Utilities Co., Inc.*, 128 M 84, 270 P 2d 742, 743; In re *Woodburn's Estate*, 128 M 145, 273 P 2d 391, 394; *Hutterian Brethren of Wolf Creek v. Haas*, 116 F Supp 37; *State ex rel. Burns v. Lacklen*, 129 M 243, 284 P 2d 998, 1004; *Carlson v. Flathead County*, 130 M 24, 293 P 2d 273, 275; *Hill v. Billings*, — M —, 328 P 2d 1112, 1114.



**93-401-16. (10520) The intention of the legislature or parties.****Action of County Commissioners**

Rules of construction prescribed by this section would be applicable in construing action of board of county commissioners in fixing salary of county officer. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1002.

**Life Insurance**

Particular intent will control a general one in statute relating to life insurance as part of estate. In re Coleman's Estate, 132 M 339, 317 P 2d 880, 882.

**Operation and Effect**

Since the original legislative intent in enacting Laws 1933, Ch. 105, was by Sec.

65 (sec. 4-170) to prohibit billboard or signboard advertising of beer, it cannot be said that the legislature of 1949 in enacting Ch. 209 (sec. 4-102) for the purpose of clarifying the distinction between liquor and beer intended to repeal such prohibition without specifically repealing such provision. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 487, 19 ALR 2d 1108.

**References**

Cited in McCarten v. Sanderson, 111 M 407, 100 P 2d 1108, 1111, 132 ALR 1220; Carlson v. Flathead County, 130 M 24, 293 P 2d 273, 275; Hill v. Billings, — M —, 328 P 2d 1112, 1114.

**93-401-17. (10521) The circumstances to be considered.****References**

Cited or applied in First Nat. Bank of Plains v. Green Mt. Soil Conservation Dis-

trict, 130 M 1, 293 P 2d 289, 291; Stokes v. Tutvet, — M —, 328 P 2d 1096, 1104.

**93-401-20. (10524) Persons skilled may testify to decipher characters.**

Admissibility of expert testimony as to proximate cause in malpractice cases. 13 ALR 2d 38.

**93-401-25. (10529) Evidence confined to material allegations.****Operation and Effect**

Where testimony is in conflict it is not reversible error for the court to admit evidence of collateral facts to determine the credibility of the witnesses. O'Sullivan v. Simpson, 123 M 314, 212 P 2d 435.

On cross-examination, questions as to the extent of sweeping done by the witness in performance of his duties at work is collateral and does not affect the credibility of the witness on the vital point that he followed the green truck after weighing it and saw defendants scoop corn from it onto another truck. State v. Keller, 126 M 142, 246 P 2d 817, 819.

Admissibility of evidence, and propriety and effect of questions, statements, comments, etc., tending to show that defendant in personal injury or death action carries liability insurance. 4 ALR 2d 761.

Admissibility in negligence action against bank by depositor, of evidence as to custom of banks in locating and dealing with checks and other items involved. 8 ALR 2d 446.

Use and admissibility of maps, plats and other drawings to illustrate or express testimony. 9 ALR 2d 1044.

**93-401-27. (10531) Facts which may be proved on trial.****Subd. 2****Criminal Case**

In criminal case, statements of defendant voluntarily made to doctor who was to perform autopsy on deceased were admissible as statements against interest. State v. Allison, 122 M 120, 199 P 2d 279, 293.

**Subd. 4****Dying Declarations**

It is within the discretion of the trial judge as to whether or not the jury should be present when the foundation for the

admission of the dying declaration is being laid. Should the trial judge find the foundation sufficient and decide to admit the dying declaration in the absence of the jury, then the whole procedure is repeated for and in the record in the presence of the jury. State v. Morran, 131 M 17, 306 P 2d 679, 686.

There was a proper foundation for the admission of a dying declaration where it was shown that the deceased made statements that he was going to die; that he was "going down for the long count"; because he was told by his doctors that he was going to die of his burns; be-

cause he knew and appreciated that his doctor was telling him the truth; because he received the last rites of his church; because he knew that an accomplice had died of burns and knew that his own burns were nearly as bad. All of these facts and circumstances warrant the conclusion that the declaration was made under a sense of impending death. *State v. Morran*, 131 M 17, 306 P 2d 679, 687. (Dissenting opinion on this point, 131 M 17, 306 P 2d 679, 691.)

Where a dying declaration contains objectionable portions, such objectionable portions may be stricken, but it is incumbent upon the defendant to specify the objectionable parts and give the reason why such parts are objectionable. *State v. Morran*, 131 M 17, 306 P 2d 679, 688. (Dissenting opinion on this point, 131 M 17, 306 P 2d 679, 689.)

#### Subd. 9

##### Weight of Testimony

Expert opinions are to be received and

weighed on the same basis as other testimony. *State v. London*, 131 M 410, 310 P 2d 571, 586.

The court in a proper case should instruct the jury as to such testimony in order that they may have a guide to the manner in which they should consider and weigh the opinions of such experts. *State v. London*, 131 M 410, 310 P 2d 571, 586.

#### References

Cited or applied in *State v. Storm*, 127 M 414, 265 P 2d 971, 976 (dissenting opinion); *State v. Pivaler*, 127 M 427, 265 P 2d 969, 970 (dissenting opinion).

Estimate or opinion as to value of personal property having no market value in action for conversion or loss of, or damage to, such property. 12 ALR 2d 935.

Admissibility on question of damages in action for libel or slander, of opinion evidence as to impression or effect of matter upon minds of individuals. 12 ALR 2d 1016.

### CHAPTER 501—EVIDENCE—JUDICIAL NOTICE OF FACTS AND FOREIGN LAWS

## 93-501-1. (10532) Certain facts of general notoriety, etc.

#### Subd. 1

##### Vodka as Intoxicating Liquor

While section 94-35-107 does not use the word "vodka" as an intoxicating liquor, it does make any beverage containing more than one-half of one per cent of alcohol an intoxicating liquor and under this section the court may take judicial notice of the commonly accepted and generally understood definition of the word "vodka." *State v. Wild*, 130 M 476, 305 P 2d 325, 334.

#### Subd. 2

##### Boundaries of Counties

The courts will take judicial notice of the boundaries of the various counties as established, fixed and defined by sections 16-201 to 16-263 and of the territorial limits of such political subdivisions of the state as such limits are shown and depicted on the official map of the state under section 19-117. *State v. Williams*, 122 M 279, 202 P 2d 245, 246.

#### Subd. 3

##### Acts of an Official

The law presumes that the commissioner of agriculture performed his official duty as required by section 3-218 and that the

form of warehouse receipt used and issued by plaintiff is in the form prescribed by law and the rules and regulations of the commissioner of agriculture of which law and official acts the Supreme Court may take judicial notice. *Northern Montana Mustard Growers Co-op. v. Britton*, 128 M 553, 280 P 2d 1078, 1085.

#### Location of City

Where the official highway map shows that the town of Greycliff is ten miles east of Big Timber, on the Yellowstone River the courts will take judicial notice of such facts. *State v. Widdicombe*, 130 M 325, 301 P 2d 1116, 1118.

#### References

Cited or applied in *In re Hunter's Estate*, 125 M 315, 236 P 2d 94, 96.

Judicial notice of federal nature of defendant for purposes of jurisdiction of federal courts. 12 ALR 2d 55.

Judicial notice of changes in cost of living or in purchasing power of money in reviewing damages for personal injuries or death. 12 ALR 2d 611.

Judicial notice as to finger prints, paw prints or bear foot prints. 28 ALR 2d 1119.

**93-501-2. Judicial notice of laws of other states.****References**

Cited or applied in *In re Hunter's Estate*, 125 M 315, 236 P 2d 94, 96; *In re*

*Stoian's Estate*, 128 M 52, 269 P 2d 1085, 1088; *Malcom v. Stondall Land & Investment Co.*, 129 M 142, 284 P 2d 258, 260.

**93-501-3. Court may inform itself of such laws.****References**

Cited or applied in *In re Hunter's Estate*, 125 M 315, 236 P 2d 94, 96.

**93-501-4. Question for court.****References**

Cited or applied in *In re Hunter's Estate*, 125 M 315, 236 P 2d 94, 96.

**93-501-5. Notice to adverse party, when required.****Notice**

Assuming that the findings of a California court that there was reciprocity between the United States and Rumania was the common law of that state, still before a party invokes the benefits of such foreign law he must give notice to

the adverse party of his intention to do so before asking the court to take judicial notice thereof. *In re Stoian's Estate*, 128 M 52, 269 P 2d 1085, 1088. (Dissenting opinions, 128 M 52, 269 P 2d 1085, 1088. 1089.)

**93-501-8. Act, how cited.**

Uniform Judicial Notice of Foreign Law Act. 23 ALR 2d 1437.

**CHAPTER 601—EVIDENCE—REPORTERS' CONFIDENCE ACT**

Section 93-601-2. Disclosure of source of information—when not required.

**93-601-2. Disclosure of source of information—when not required.** No persons engaged in the work of, or connected with or employed by any newspaper or any press association, or any radio broadcasting station, or any television station for the purpose of gathering, procuring, compiling, editing, disseminating, publishing, broadcasting or televising news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial or investigation before any court, grand jury or petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent or agents, or before any commission, department, division or bureau of the state, or before any county or municipal body, officer or committee thereof.

**History:** En. Sec. 2, Ch. 195, L. 1943; amd. Sec. 1, Ch. 56, L. 1951.

television station" and "broadcasting or televising."

**Amendment**

The 1951 amendment inserted the words "or any radio broadcasting station, or any

**Repealing Clause**

Section 2 of Ch. 56 L. 1951 repealed all acts or parts of acts in conflict therewith.

**CHAPTER 701—EVIDENCE—WITNESSES****93-701-1. (10533) Witness defined.**

Competency of physician or surgeon from one community to testify in malpractice case as to standard of care re-

quired of defendant practicing in another community. 8 ALR 2d 772.



**93-701-2. (10534) All persons capable of perceptions, etc.**

Testimony of children as to grounds of divorce of their parents. 2 ALR 2d 1329.

**93-701-3. (10535) Persons who cannot be witnesses.****Subd. 1**Operation and Effect

Where prosecuting witness in an assault case had been adjudicated mentally incompetent in 1938 and was not officially restored to capacity until two years after offense was committed but that was more than year prior to the trial, the district court did not err in allowing the person to testify regarding the assault. *State v. Cockrell*, 131 M 254, 309 P 2d 316, 320.

**Subd. 2**Whether Child is Competent within Discretion of Trial Judge

Whether or not a child is competent to testify rests within the discretion of the trial judge and his conclusion will not be disturbed unless there has been an abuse of discretion. *State v. Shambo*, 133 M 305, 322 P 2d 657, 659.

**Subd. 3**Competency After Testimony of Another

In action on claim against estate for money loaned by daughter to deceased, it was proper, after testimony of witness that she heard plaintiff say, "Could I have the money you owe me, Mother?" to which the mother replied "Yes, I owe you \$520 and you will get every cent of it," to permit plaintiff to testify in her own behalf concerning the making of the loan to her mother. *Ahlquist v. Pinski*, 120 M 355, 185 P 2d 499, 501.

Operation in General

A party to an action to enforce a contract to make a will may not testify as to the facts of direct transactions or oral communications between himself and the deceased, except when, without the testimony of the witness injustice will be done. *Cox v. Williamson*, 124 M 512, 227 P 2d 614, 619.

Court should not admit testimony of witness who is party to case to enforce agreement alleged to have been made with deceased until sufficient other independent testimony has been admitted to warrant the court, in exercise of its discretion, to render a ruling in favor of such testimony, which discretion must be exercised with

caution and reasonable strictness. *Cox v. Williamson*, 124 M 512, 227 P 2d 614, 619.

Sufficiency of Foundation Evidence

Evidence which tends to establish at most nothing more than an intention on the part of the testator to leave to another a certain sum of money, will not support an allegation of express agreement or contract to do so, so as to permit testimony of plaintiff as to contract made with deceased. *Cox v. Williamson*, 124 M 512, 227 P 2d 614, 621.

Where there was no other evidence to establish the loan, it was not an abuse of discretion to reject plaintiff's testimony as to direct transactions or oral communications between plaintiff and decedent in connection with the alleged loan. *Mowbray v. Mowbray*, 131 M 580, 312 P 2d 995.

**Subd. 4**Operation and Effect

Under the exception to this section, which allows the testimony of a party or assignor "when it appears to the court that without the testimony of the witness injustice will be done" there must first be sufficient other testimony admitted to warrant the court, in the exercise of its discretion to rule in favor of the questionable testimony. *Potlatch Oil & Refining Co. v. Ohio Oil Co.*, 199 F 2d 766.

Under the Montana dead mens statute, the testimony of an assignor of the plaintiff relating to a conversation with one of defendant's officers was properly excluded since the officer of defendant was now dead, nor was it admissible under Rule 43 (a) of the Federal Rules since the witness, a stockholder of plaintiff corporation, was interested in the outcome of the suit. *Potlatch Oil & Refining Co. v. Ohio Oil Co.*, 199 F 2d 766.

**References**

Cited or applied in *O'Sullivan v. Simpson*, 123 M 314, 212 P 2d 435; *Potlatch Oil & Refining Co. v. Ohio Oil Co.*, 96 F Supp 685, 688; *Feely v. Lacey*, 133 M 283, 322 P 2d 1104, 1108.

Competency of witness as affected by coverage of pardon. 35 ALR 2d 1262.

**93-701-4. (10536) Persons in certain relations cannot be examined.****Subd. 1**Testimony by Widow

Objection to testimony by widow as to

statements made by deceased spouse was properly overruled where it was shown that deceased did not regard the com-

munications as confidential in that he had made the communications to others beside his wife. *Thompson v. Steinkamp*, 120 M 475, 187 P 2d 1018, 1021.

#### Cross-Reference

Testimony of husband or wife in support proceedings, sec. 94-901-18.

Right of one against whom testimony is offered to invoke privilege of communication between others. 2 ALR 2d 645.

Conversations between husband and wife relating to property or business as within rule excepting private communications between them. 4 ALR 2d 835.

"Communications" within testimonial privilege of confidential communications between husband and wife as including knowledge derived from observation by one spouse of acts of another spouse. 10 ALR 2d 1387.

### CHAPTER 801—EVIDENCE—UNIFORM BUSINESS RECORDS AS EVIDENCE ACT—UNIFORM PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

Section 93-801-5. Reproductions of originals.  
93-801-6. Interpretation of act.

#### 93-801-1. "Business" defined.

##### References

Cited or applied in *Richardson v. Farmers Union Oil Co.*, 131 M 535, 312 P 2d 134, 143.

Verification and authentication of slips,

#### 93-801-2. Proof of business records.

##### Bank Records

In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, bank records of decedent's checking account were properly admitted as evidence. *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042, 1043.

##### Operation and Effect

The reports on an accountant, who was hired to do accounting for the company

tickets, bills, invoices, etc., made in regular course of business, under the Uniform Business Records as Evidence Act, or under similar "Model Acts." 21 ALR 2d 773.

while it was a going concern, were admissible in evidence. *McGrath v. Dubs*, 127 M 101, 257 P 2d 899, 905.

In order to justify the admission of a record it is incumbent upon the court to require, as a part of the foundation, evidence as to the sources of information, method and time of preparation. *Richardson v. Farmers Union Oil Co.*, 131 M 535, 312 P 2d 134, 143.

#### 93-801-4. Act, how cited.

What constitutes books or original entry within rule as to admissibility of books of account. 17 ALR 2d 235.

**93-801-5. Reproductions of originals.** If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding, whether the original is in existence or not, and an enlargement or facsimile of such

reproduction is likewise admissible in evidence, if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

**History:** En. Sec. 1, Ch. 100, L. 1953.

**Compiler's Note**

The Uniform Photographic Copies of Business and Public Records as Evidence Act has been adopted by Alabama, Alaska, California, Florida, Georgia, Hawaii, Idaho, Iowa, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma,

Pennsylvania, South Dakota, Virginia, Washington and Wisconsin.

**Title of Act**

An act relating to the preservation of business and public records by the preparation of photographic copies thereof, providing that the originals thereof may be destroyed under certain conditions and that such copies may be used in place of the original.

**93-801-6. Interpretation of act.** This act shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it.

**History:** En. Sec. 2, Ch. 100, L. 1953.

**Repealing Clause**

Section 3 of Ch. 100, Laws 1953 repealed

all acts or part of acts inconsistent with the provisions of this act.

CHAPTER 901—EVIDENCE—UNIFORM OFFICIAL REPORTS AS EVIDENCE ACT

**93-901-1. Official reports admissible as evidence.**

**Operation and Effect**

In a negligence action this section did not permit the admission of an air force accident report, prepared under an air

force regulation, because it was not prepared by an officer of this state. *Richardson v. Farmers Union Oil Co.*, 131 M 535, 312 P 2d 134, 144.

CHAPTER 1001—EVIDENCE—PUBLIC WRITINGS

**93-1001-8. (10546) Written law defined.**

**References**

Cited or applied in *In re Gaspar's Estate*, 128 M 383, 275 P 2d 656, 661.

Use and admissibility of maps, plats and other drawings to illustrate or express testimony. 9 ALR 2d 1044.

**93-1001-9. (10547) Constitution and statutes.**

**References**

Cited in *State ex rel. Bennett v. Bonner*, 123 M 414, 214 P 2d 747; *Bond v. Birk*, 126 M 250, 247 P 2d 199, 206; *State ex rel. Reid v. District Court*, 126 M 489,

255 P 2d 693, 703; *In re Kay's Estate*, 127 M 172, 260 P 2d 391, 394; *State ex rel. Burns v. Lacklen*, 129 M 243, 284 P 2d 998, 1004; *Ruona v. City of Billings*, — M —, 323 P 2d 29, 32 (dissenting opinion).

**93-1001-11. (10549) Unwritten law defined.**

**References**

Cited or applied in *In re Gaspar's Estate*, 128 M 383, 275 P 2d 656, 661; *In re*

*Spoya's Estate*, 129 M 83, 282 P 2d 452, 455.

**93-1001-14. (10552) Other evidence of laws of other states.**

**Operation and Effect**

Under this section it was proper for a foreign law expert to testify as to reciprocity between this country and a foreign country in regard to inheritance rights of the citizens. *In re Spoya's Estate*, 129 M 83, 282 P 2d 452, 454.

**References**

Cited or applied in *In re Gaspar's Estate*, 128 M 383, 275 P 2d 656, 661.



**93-1001-19. (10557) Copy of a foreign record—when evidence.****Operation and Effect**

Certified copies of decisions of district courts, containing the seal of the court properly authenticated and in substantial compliance with this section, showing in substance that in the cases under consideration American citizens either in-

herited property from the estate of one dying in Yugoslavia or the decisions otherwise respected property rights of American citizens in property in Yugoslavia were properly received in evidence to show reciprocity. In re Spoya's Estate, 129 M 83, 282 P 2d 452, 456.

**93-1001-20. (10558) Effect of a judgment or final order upon rights, etc.****Decree of Settlement of Final Account and Distribution of Estate**

A decree of distribution does not concern itself with, and is not the final order of the court on the point of, the payment of legacies, but that is the office of the decree of discharge under section 91-3906. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092.

**Effect of Judgment or Order in General**

A judgment or final order in an action or proceeding is not evidence, conclusive or otherwise, of matters that were not involved in the proceeding and not determined. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1091.

Conclusiveness of allowance of account of trustee or personal representative as

respects self-dealing in assets of estate. 1 ALR 2d 1060.

Res judicata as affected by fact that former judgment was entered by agreement or consent. 2 ALR 2d 514.

Judgment as res judicata pending appeal or motion for a new trial, during the time allowed therefor. 9 ALR 2d 984.

Judgment in suit for cancellation of restrictive covenant on ground of change in neighborhood as res judicata in suit for injunction against enforcement of covenant on that ground, and vice versa. 10 ALR 2d 357.

Status of judgment or order as res judicata as affected by subsequent dismissal, discontinuance or nonsuit. 11 ALR 2d 1420.

**93-1001-23. (10561) What deemed adjudged in a judgment.****References**

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1091.

**93-1001-29. (10567) The jurisdiction necessary in a judgment.****References**

*Gans & Klein Invest. Co. v. Sanford et al.*, 91 M 512, 521, 8 P 2d 808.

**93-1001-32. (10570) Entries in official books prima facie evidence.****Location of City**

Where official highway map shows that the town of Greycliff is ten miles east of Big Timber on the Yellowstone River the courts will take judicial notice of such facts. *State v. Widdicombe*, 130 M 325, 301 P 2d 1116, 1118.

**Reports of Livestock Inspector**

Reports made by the livestock inspector pursuant to section 3324, Revised Codes 1935 (Repealed Ch. 59, Laws 1943. See section 46-802) were admissible in evidence as public records. *Smith v. Armstrong*, 121 M 377, 198 P 2d 795, 800.

**93-1001-38. (10576) Entries made by officers or boards, etc.****Reports of Livestock Inspector**

Reports made by the livestock inspector pursuant to section 3324, Revised Codes 1935 (Repealed Ch. 59, Laws 1943. See

section 46-802) were admissible in evidence as public records. *Smith v. Armstrong*, 121 M 377, 198 P 2d 795, 800.

**CHAPTER 1101—EVIDENCE—PRIVATE WRITINGS****93-1101-12. (10588) Writings—how proved.****Sufficiency of Evidence**

Where one of witnesses testified that signature on note was that of defendant and identified the note, it was sufficient

to admit the note in evidence. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 377.

Where witness testified that he made the writing, that he signed it as a party there-

to and that he saw the other party sign it, and another witness testified as to the genuineness of such other party's signature, there was sufficient evidence to show

execution and make the writing admissible in evidence. *Cottingham v. Doyle*, 122 M 301, 202 P 2d 533.

### 93-1101-14. (10591) Evidence of handwriting.

#### Cross-Reference

See annotation to section 93-1101-12. *Betor v. Chevalier*, 121 M 337, 193 P 2d 374, 377.

## CHAPTER 1301—EVIDENCE—INDIRECT—INFERENCES AND PRESUMPTIONS

### 93-1301-1. (10600) Indirect evidence classified.

#### References

Cited in *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042.

### 93-1301-2. (10601) Inference defined.

#### Instructions

An instruction containing an abstract statement of the statutory law as set out in this section and sections 93-1301-3, 93-1301-4 is not error when the facts are few and simple. *Gobel v. Rinio*, 122 M 235, 200 P 2d 700, 705.

In an action for damages resulting from negligence in driving automobile an instruction touching upon the usual propensities or passions of man when there was no evidence touching on such subject, was harmless, if error. *Gobel v. Rinio*, 122 M 235, 200 P 2d 700, 705.

#### Operation and Effect

If an inference is to be permitted to show a previous condition, the foundation

### 93-1301-3. (10602) Presumption defined.

#### Cross-Reference

See note to sec. 93-1301-3. *Gobel v. Rinio*, 122 M 235, 200 P 2d 700, 705.

#### Operation and Effect

Where the defendant motor fuel carrier, while delivering gasoline to a filling station allowed some gas to escape, and as a result of such escape the gas was ignited and a fire resulted which destroyed the filling station, the doctrine of *res ipsa loquitur* can be relied upon by the plaintiff for damages resulting from the destruction of his filling station. *Harding v. H. F. Johnson, Inc.*, 126 M 70, 244 P 2d 111.

No presumption is to be inferred from

must show that the substance was in the same state or condition at a time not too remote, and that the nature of the substance is constant. *Richardson v. Farmers Union Oil Co.*, 131 M 535, 312 P 2d 134, 139.

#### References

Cited or applied in *Trenouth v. Mulroney*, 124 M 499, 227 P 2d 590, 595.

Admissibility of evidence as to financial condition of debtor on issue as to payment of debt. 9 ALR 2d 205.

the fact that a condition exists at a particular time that it existed in the past, since presumptions cannot be reversed and they do not operate backwards. *Richardson v. Farmers Union Oil Co.*, 131 M 535, 312 P 2d 134, 139, 145.

#### References

Cited in *Dial v. Dial*, 131 M 310, 310 P 2d 610, 613 (dissenting opinion); *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042.

Conveyance of lot with reference to map or plat as creating presumption of right in nonabutting indicated streets, alleys or areas. 7 ALR 2d 607.

### 93-1301-4. (10603) When an inference arises.

#### Cross-Reference

See note to sec. 93-1301-2. *Gobel v. Rinio*, 122 M 235, 200 P 2d 700, 705.

#### Operation and Effect

This statute makes no distinction between "a fact legally proved" by direct

evidence and "a fact legally proved" by circumstantial evidence. A fact, although arrived at by indirect or circumstantial evidence, may serve as a basis for an inference. *Fegles Const. Co. v. McLaughlin Const. Co.*, 205 F 2d 637, 639.

The presumption of the continued existence of a person, a personal relation, or a state of things is prospective, and not retrospective, and the law does not presume, from proof of the existence of present conditions or facts, that the same facts or conditions had existed for any

length of time previously. *Richardson v. Farmers Union Oil Co.*, 131 M 535, 312 P 2d 134.

#### References

Cited or applied in *Trenouth v. Mulroney*, 124 M 499, 227 P 2d 590, 595.

### 93-1301-5. (10604) Presumptions may be controverted, when.

#### Operation and Effect

Unless a presumption is controverted by other evidence, it is binding on the court. *Dial v. Dial*, 131 M 310, 310 P 2d 610, 612.

A statutory disputable presumption is satisfactory if uncontradicted, and must be followed if uncontroverted. *State v. Rice*, — M —, 329 P 2d 451, 455.

Whether sworn testimony to the contrary is sufficient to rebut a statutory pre-

sumption is a question for the triers of fact to determine, except where the facts proved are overwhelmingly against the presumed facts and permit of but one rational and reasonable conclusion. *State v. Rice*, — M —, 329 P 2d 451, 455.

Overcoming presumption of owner's consent to operation of automobile by another. 5 ALR 2d 196.

### 93-1301-6. (10605) Specification of conclusive presumptions.

#### Subd. 3

##### Operation and Effect

Equitable estoppel will prevent a contractor from asserting a lien preference for an amount over the contract price against the first mortgagee where the contractor made representation as to the total price of the work to the mortgagee and knew that the loan would not have been granted had it been for a greater amount. *McGaffick v. Leigland*, 130 M 332, 303 P 2d 247.

This section is a declaration of the doctrine of equitable estoppel. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1090.

Where executors made an advance payment out of their personal funds to the legatee of a cash bequest, they were not estopped from asserting a debt due from the legatee, as against a judgment creditor of the legatee, even though the petition for distribution and final account showed no legacy advancements had been made. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1090.

#### Statements not Creating Estoppel

Where lessee of property with option to purchase sued for specific performance he could not be estopped from exercising his option by testimony of statements made by lessee to lessor and prospective purchaser of property from lessor, prior to time for exercise of option, that he did not intend to purchase the property if he could get certain other property he had in mind. *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968, 973.

In action by church members to set aside a deed executed by certain persons purporting to act as trustees, they could not be estopped by statements by one of their number proposing that the church

property be sold. *Smith v. St. John Baptist Church*, 123 M 264, 211 P 2d 975, 978.

#### Subd. 4

##### Operation and Effect

Where land was purchased by defendant and leased to plaintiff, plaintiff should not be permitted to claim that the purchase price of the land constituted a loan from defendant to plaintiff and that deed was made to defendant as security for the loan and therefore defendant held the land in trust for plaintiff. *Laas v. All Persons*, 121 M 43, 189 P 2d 670 (concurring opinion).

#### Subd. 6

##### Operation and Effect

A decree of distribution does not concern itself with whether a legacy has been paid, acquired by third parties or is subject to a lien and the decree is not the final order of the court on the point of payment in the closing of an estate, but that is the office of the decree of final discharge under section 91-3906. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092.

#### Operation and Effect

A judgment or final order in an action or proceeding is not evidence, conclusive or otherwise, of matters that were not involved in the proceeding and not determined. *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1091.

#### References

Cited in *In re Minder's Estate*, 128 M 1, 270 P 2d 404, 414, 45 ALR 2d 898; *Gaffney v. Industrial Accident Board of Montana*, 130 M 394, 287 P 2d 256, 258; *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 503; *In re Hardy's Estate*, 133 M 536, 326 P 2d 692.



**93-1301-7. (10606) All other presumptions may be controverted. \* \* \***  
**40. [Repealed.]**

**Repeal**

Paragraph 40 of this section was repealed by Sec. 9, Ch. 20, L. 1951 (the Uniform Simultaneous Death Act compiled as secs. 91-423 to 91-430).

**Subd. 3**

Operation and Effect

A person instituting a criminal proceeding for passing a fraudulent check intends to vex, annoy and injure such person within the meaning of the word malice in section 19-103. *Rickman v. Safeway Stores, Inc.*, 124 M 451, 227 P 2d 607, 610.

Evidence was undisputed that defendant, charged with assault in first degree, shot the victim twice, critically wounding him. The repeated shooting into the vital parts of the body of a live human being with a deadly weapon is evidence that the gun was used intentionally and deliberately, and demonstrates the intent to kill. With this fact established the law presumes that the defendant was sane at the time he committed the act; that defendant committed the unlawful act with an unlawful intent, and that defendant intended the ordinary consequences of his voluntary act. These are rebuttable presumptions. *State v. McLeod*, 131 M 478, 311 P 2d 400, 406, 407.

**Subd. 9**

Certificate of Title

In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, it was a question for the jury whether title certificate was first surrendered as evidence of a pledge and then returned as evidence of payment. *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042.

**Subd. 15**

Acts of an Official

The law presumes that the commissioner of agriculture performed his official duty as required by section 3-218 and that the form of warehouse receipt used and issued by plaintiff is in the form prescribed by law and the rules and regulations of the commissioner of agriculture of which law and official acts this court may take judicial notice. *Northern Montana Mustard Growers Co-op. v. Britton*, 128 M 553, 280 P 2d 1078, 1085.

**Subd. 25**

Operation and Effect

Where a defendant was charged with a prior conviction of a felony there must be some evidence aside from the judgment itself that the person who stood convicted

by the prior judgments of conviction was the defendant in the instant case. *State v. Nelson*, 130 M 466, 304 P 2d 1110.

**References**

Cited or applied in *Whitney v. Northwest Greyhound Lines*, 125 M 528, 242 P 2d 257, 264, 266 (dissenting opinion); *Lehfeldt v. Adams*, 130 M 395, 303 P 2d 934, at 936; *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 303 (dissenting opinion).

Presumption with respect to succession or estate taxes affecting estates by entirety and other joint estates. 1 ALR 2d 1146.

Presumption and burden of proof as to nonrevocation of lost will. 3 ALR 2d 952, 957.

Overcoming inference or presumption of driver's agency for owner, or latter's consent to operation, of automobile. 5 ALR 2d 196.

Relationship between party and witnesses as giving rise to or affecting presumption for inference from failure to produce or examine witness. 5 ALR 2d 893.

Presumption as to value of corporate stock or bonds. 6 ALR 2d 189.

Presumption of gratuity as to services rendered by member of household or family other than spouse without express agreement for compensation. 7 ALR 2d 8.

Presumption of negligence of carrier in leaving open door through which passenger steps or falls. 7 ALR 2d 1427.

Presumptions as to unadjudged incompetency which prevents running of statute of limitations. 9 ALR 2d 967.

Presumptions and inferences as to power of president of corporation to have litigation instituted by it, where express authorization by board of directors is not shown. 10 ALR 2d 710-713.

Proof of death from injury from external and violent means as supporting presumption or inference of death by accidental means within policy of insurance. 12 ALR 2d 1264.

Presumptions and burden of proof of evidence where goods stored in situation governed by Uniform Warehouse Receipts Act are stolen, or are damaged or lost by fire or water. 13 ALR 2d 681.

Presumption as to validity of second marriage. 14 ALR 2d 7.

Presumptions concerning damages in action for personal injury resulting in death of infant. 14 ALR 2d 514.

Presumption of undue influence in non-

testamentary gift to clergyman, spiritual adviser, or church. 14 ALR 2d 653.

Presumption as to what would be to child's best interest in case involving non-

resident's right to custody of child. 15 ALR 2d 463.

Presumption of foreign naturalization for expatriation purposes. 15 ALR 2d 572.

#### CHAPTER 1401—EVIDENCE—INDISPENSABLE—UNWRITTEN AGREEMENTS—CONCLUSIVE—UNANSWERABLE

### 93-1401-3. (10609) Will to be in writing.

#### Operation and Effect

A power of attorney to a physician to perform all medical services for decedent for which he was to receive \$2,000, any portion of such amount unpaid on her

death to be paid by her executor, was invalid unless executed in compliance with this section. *Trenouth v. Mulroney*, 124 M 499, 227 P 2d 590, 597.

### 93-1401-5. (10611) Transfer of real property to be in writing.

#### Parol Evidence

Where quitclaim deed was typewritten on printed form which contained lines for the signatures and the acknowledgment but the paper showed no evidence that any name had ever been signed thereto or any notary's seal attached, it could not be shown by parol evidence that the deed

was actually signed. *Miller v. Miller*, 121 M 55, 190 P 2d 72, 75.

#### References

Cited in *Hankins v. Waitt*, 120 M 596, 189 P 2d 666; *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968, 970; *Cleveland-Arvin v. Cleveland*, 123 M 463, 215 P 2d 963.

### 93-1401-7. (10613) Agreement not in writing—when invalid.

#### Memorandum

An endorsed bank check with the additional words "payment land" written on it is insufficient to constitute the written "note or memorandum" required by the statutes for it does not contain all the essentials of the agreement. *Lewis v. Peterson*, 127 M 474, 267 P 2d 127, 128.

#### "Party Charged"

The "party to be charged" means the party to be charged in the particular suit. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

#### Presumption of Writing

The law will presume that a contract was in writing in the absence of any statement to the contrary. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

#### Sale of Ranch

In action for specific performance of contract for purchase of ranch of defendants, writings were sufficient to take the case out of the statute of frauds where instrument giving broker exclusive right for 30 days to sell ranch for \$30,000, provided that defendants were to pay broker a \$1,000 commission, recited that terms of sale were cash to defendants, possession should be taken by purchaser on named date and that defendants, who retained a 5% royalty, agreed to pay 1953 taxes and transfer all lease land to purchaser, who

accepted unqualifiedly in writing accompanied by check as a down payment. *Ward v. Mattushek*, — M —, 330 P 2d 971.

#### Sufficiency of Complaint

Where complaint shows on its face that memorandum of agreement does not contain all essentials of agreement and such essentials cannot be ascertained without resort to oral evidence, demurrer to complaint was properly sustained. *Dineen v. Sullivan*, 123 M 195, 213 P 2d 241.

Although a contract to be valid must be in writing, that fact is a matter of proof and need not be alleged in the pleading. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

#### Sufficiency of Memorandum

The memorandum must contain all the essentials of the contract but if the material elements are stated in general terms all the details or particulars need not be stated. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

#### References

Cited or applied in *Hankins v. Waitt*, 120 M 596, 189 P 2d 666; *Herman v. Herman*, 123 M 39, 207 P 2d 1155, 1157.

Sale of contractual rights; defect in written record as ground for avoiding sale. 10 ALR 2d 728.

## CHAPTER 1501—EVIDENCE—PRODUCTION OF—SUBPOENAS

**93-1501-1. (10616) Evidence to be produced, by whom.****Operation and Effect**

Where a plaintiff may be aided by a permissive inference as *prima facie* support of her contention, her opponent need do no more than counter-balance such permissive inference or *prima facie* case; he is not required to overbalance or outweigh it and when the whole of the evidence upon the issue involved leaves the case in equipoise, the one affirming on whom rests the burden must lose. *Whitney v. Northwest Greyhound Lines*, 125 M 528, 242 P 2d 257, 264, 265 (dissenting opinion).

Under this section the party asserting a right in any case has the burden of proving each of the material allegations of his cause of action. *McDonald v. Peters*, 128 M 241, 272 P 2d 730, 731.

Partition suit, burden of proof as regards alleged prior voluntary partition of property. 1 ALR 2d 473.

Burden of proof with respect to succession or estate taxes affecting estates by entirety and other joint estates. 1 ALR 2d 1146.

Burden of proof as to change of beneficiary of national service life insurance. 2 ALR 2d 509.

Burden of proof as to nonrevocation of lost will. 3 ALR 2d 952, 957.

Burden of proof as to reasonableness of amount of funeral expenses. 4 ALR 2d 1021.

Burden of proof as to unadjudged incompetency which prevents running of statute of limitations. 9 ALR 2d 967.

Burden of proof as to exception in insurance policy as to loss or damage caused by dishonesty of employee. 12 ALR 2d 236.

Burden of proving actual damage from conversion or loss of, or damage to, personal property having no market value. 12 ALR 2d 909.

Burden of proof where goods stored in situation governed by Uniform Warehouse Receipts Act are stolen, or are damaged or lost by fire or water. 13 ALR 2d 681.

Burden of proof as to cause in life, accident, or health policy excluding or limiting liability in case of insured's use of intoxicants or narcotics. 13 ALR 2d 1013.

Burden of proof in unemployment compensation cases involving leaving employment or unavailability for particular job or duties, because of sickness or disability. 14 ALR 2d 1311.

Burden of proof as to what would be to child's best interest in case involving nonresident's right to custody of child. 15 ALR 2d 463.

Burden of proof or justification in action against landowner for killing or injuring trespassing dog. 15 ALR 2d 578.

Burden of proof in action against owner or bailor of horse for injuries by horse to hirer or bailee thereof. 15 ALR 2d 1331.

**93-1501-3. (10618) Subpoena for witness defined.****References**

Cited or applied in *State ex rel. Wood-*

*ard v. District Court*, 120 M 585, 189 P 2d 998, 1001.

**93-1501-7. (10622) Repealed.****Repeal**

This section (Sec. 380, p. 212, L. 1867; amd. Sec. 1, Ch. 113, L. 1949), relating to

when a witness is not compelled to attend pursuant to subpoena, was repealed by Sec. 1, Ch. 154, Laws 1959.

**93-1501-8. (10623) Person present compelled to testify.**

Form, particularity, and manner of designation required in subpoena duces

tecum for production of corporate books, records, and documents. 23 ALR 2d 862.

## CHAPTER 1701—EVIDENCE—AFFIDAVITS

**93-1701-1. (10636) Affidavits—for what purposes may be used.****Child Custody Proceedings**

In proceedings to modify child custody orders, defendant, a divorced father properly filed a verified answer controverting

the mother's affidavit on which citation for hearing was issued. *Trudgen v. Trudgen*, — M —, 329 P 2d 225, 229.

**93-1701-6. (10641) If made in a foreign country, before whom taken.****Foreign Notaries**

Federal district court properly con-

sidered affidavits executed before notaries in foreign countries in determining motion



to dismiss for improper service of process under sections 53-201 to 53-206 although such affidavits did not comply with this

section. *Bucholz v. Hutton*, 153 F Supp 62, 66.

## CHAPTER 1801—EVIDENCE—DEPOSITIONS, HOW TAKEN WITHIN AND WITHOUT THE STATE

Section 93-1801-4. Testimony of witness out of the state taken upon commission issued under seal, upon notice—to whom to issue.

**93-1801-4. (10646) Testimony of witness out of the state taken upon commission issued under seal, upon notice—to whom to issue.** The deposition of a witness out of this state may be taken upon the commission issued from the court, under the seal of the court, upon an order of the court, or a judge thereof, on the application of either party, upon five [5] days' previous notice to the other. If issued to any place within the United States, it may be directed to any person agreed upon by the parties, or if they do not agree, to any judge or justice of the peace, or commissioner, or notary public, selected by the court or judge issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties.

**History:** Ap, p. Sec. 346, p. 115, Bannack Stat.; amd. Sec. 408, p. 217, L. 1867; amd. Sec. 482, p. 132, Cod. Stat. 1871; amd. Sec. 1, p. 49, L. 1874; amd. Sec. 661, p. 211, L. 1877; re-en. Sec. 661, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 49, L. 1883; re-en. Sec. 683, 1st Div. Comp. Stat. 1887; en. Sec. 3350, C. Civ. Proc. 1895; re-en. Sec. 8002, Rev. C. 1907; re-en. Sec. 10646, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1953. Cal. C. Civ. Proc. Sec. 2024.

### Amendment

The 1953 amendment added the words "or notary public" in the second sentence.

### Effective Date

Section 2 of Ch. 9, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 6, 1953.

### References

Cited or applied in *Schuster v. Northern Co.*, 127 M 39, 257 P 2d 249, 253.

Admissibility of deposition of child of tender years. 30 ALR 2d 771.

## 93-1801-12. (10654) A deposition once taken may be read at any time.

### Operation and Effect

Where a plaintiff offers a deposition in evidence, he is not bound by such evidence in the sense that he may not offer evidence

that conflicts with it and have all the evidence considered by the jury. *McCollum v. O'Neil*, 128 M 584, 281 P 2d 493, 496.

## CHAPTER 1901—EVIDENCE—GENERAL RULES OF EXAMINATION

## 93-1901-2. (10660) Witness not under examination may be excluded.

### Discretion of Court

The matter of excluding witnesses rests in the discretion of the trial court and the supreme court will not disturb the action of the trial court in the absence of a showing of prejudice. *Smith v. Armstrong*, 121 M 377, 198 P 2d 795, 799.

Where no prejudice is shown, the judge's refusal to exclude will not be disturbed on appeal. *State v. McLeod*, 131 M 478, 311 P 2d 400, 408.

### Exempting Some Witnesses From Requirements

It is not mandatory that the motion be granted in its entirety. It is discretionary with the court to exempt some witnesses from the operation of the exclusion rule. It was not an abuse of discretion where the prosecuting witness was paralyzed and needed the personal attention of his wife. *State v. Cockrell*, 131 M 254, 309 P 2d 316, 321.

**Felony Cases**

Customary and universal rule of exclusion of witnesses should be applied in all felony cases, when proper and timely request, supported by particular and well founded reasons, is made. *State v. McLeod*, 131 M 478, 311 P 2d 400, 409.

**Witness Influencing Another**

Defendant was not prejudiced by court's refusal of his motion for exclusion of witnesses where the state's witnesses each

testified as individuals and some of the state's witnesses even disputed each other on some of the vital facts in the case. This demonstrated that there was no evidence of any witness being under the influence of any other witness. *State v. Leod*, 131 M 478, 311 P 2d 400, 409.

**References**

Cited or applied in *Feely v. Lacey*, 133 M 283, 322 P 2d 1104, 1110.

**93-1901-3. (10661) Court may control mode of interrogation.****Limitation of Re-examination**

Where re-direct examination did not elicit any new matters court did not err in denying the defendant an opportunity for re-cross-examination. *State v. McSloy*, 127 M 265, 261 P 2d 663, 666.

**Operation and Effect**

Under this section and section 93-401-25, the trial court may control the cross-examination of witnesses. *State v. Keller*, 126 M 142, 246 P 2d 817, 819.

**93-1901-7. (10665) Cross-examination, as to what.****Cross-examination as to Matters Stricken from the Records**

There is no merit to the defendant's contention that she was unduly restricted in the cross-examination of a witness when she was not permitted to examine the witness as to what he had testified to in the morning because it was ordered stricken from the record. The defendant was permitted to examine the defendant as to what occurred during the trip which was what the morning examination of the witness had been about. *State v. Robuck*, 126 M 302, 248 P 2d 817.

**Operation and Effect**

Where the matter of the absence of influence by members of the defendant's family was brought out by the defense upon cross-examination, the state then had the privilege to make inquiry into the subject of influence by members of the family. *State v. London*, 131 M 410, 310 P 2d 571, 583.

Cross-examination of witness in criminal case as to whether, and with whom, he has talked about or discussed the facts of the case. 35 ALR 2d 1045.

Right to examine witness as to his place of residence. 37 ALR 2d 737.

**93-1901-8. (10666) Party producing witness, how far may impeach, etc.**

Impeachment of witness by evidence or inquiry as to arrest, accusation, or prosecution. 20 ALR 2d 1421.

**93-1901-9. Litigant calling opposite party as witness not bound, etc.****Not Applicable in Criminal Proceeding**

In a criminal case the state of Montana is the opposite party to the defendant, and the adverse witness statute is not applicable to a criminal proceeding. *State v. Moorman*, 133 M 148, 321 P 2d 236, 238.

**References**

Cited or applied in *McGaffick v. Leigland*, 130 M 332, 303 P 2d 247, 260; *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

**93-1901-10. (10667) Witness, how examined—when re-examined.****Limitation of Re-examination**

Where re-direct examination did not elicit any new matters court did not err in denying the defendant an opportunity for re-cross-examination. *State v. McSloy*, 127 M 265, 261 P 2d 663, 666.

**References**

Cited or applied in *State v. London*, 131 M 410, 310 P 2d 571, 583.

**93-1901-11. (10668) How impeached.****Improper Method of Impeachment**

Defendant was deprived of a substantial right, the right to object to questions

and answers which were collateral, immaterial and prejudicial, when a fourteen page document was introduced and ac-

cepted in evidence over defendant's objection, which document contained some matters which were collateral, immaterial and prejudicial although some of the statements were proper impeaching evidence. By accepting the entire document, the defendant was prevented from excluding immaterial and collateral matters. *State v. Deeds*, 126 M 38, 243 P 2d 314.

#### Particular Wrongful Acts Not Admissible

In a prosecution for rape, evidence tending to show that the defendant had committed rape upon another woman at some prior time was inadmissible as tending to establish a systematic scheme or plan, or connecting the defendant with the crime charged. Such evidence only tended to show bad character and disposition and if the defendant introduced no evidence of his good reputation, such evidence is clearly inadmissible. *State v. Sauter*, 125 M 109, 232 P 2d 731, 733.

#### Prejudicial and Incompetent Questions

Where the county attorney continually asked one of defendant's character witnesses about how many times he had been in jail in different counties it was not proper questioning and it cannot be said that a defendant has had a fair and impartial trial where the prosecutor continually asks the defendant or his witnesses prejudicial and incompetent ques-

tions. *State v. Toner*, 127 M 283, 263 P 2d 971, 975.

#### Proper Method to Impeach

Where a defendant takes the stand and upon cross-examination admits his prior convictions, the purpose of the statute was served, weakening his credibility as a witness. To go further and introduce the judgment showing such prior convictions serves no good purpose and it is prejudicial error to admit it. *State v. Coloff*, 125 M 31, 231 P 2d 343, 344.

#### Violation of Rule is Invasion of Substantial Right

Violation of this rule is an invasion of a substantial right, and where, in the cross-examination of a mother charged with murder for failure to feed her child, questions were asked involving the death of another child, the prosecution's statements that the questions were to test her credibility, and to prove that she knew that insufficient food would result in child's death were not acceptable and the error was not waived by efforts of defendant's counsel to explain the matter on redirect. *State v. Rivers*, 133 M 129, 320 P 2d 1004, 1007.

#### References

Cited or applied in *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1063 (dissenting opinion).

### 93-1901-12. (10669) Same—by evidence of declarations.

#### Testimony in Juvenile Court may be Used for Impeachment of Juvenile as a Witness

Section 10-611, which prohibits the "disposition of a child or any evidence given in the juvenile court being used as evidence against the child in any other case or proceeding," applies only when the

child is a party to a later proceeding. Prior contradictory statements made in the juvenile court may be admitted when the juvenile is a witness in a later proceeding for the purpose of impeachment. *State v. Searle*, 125 M 467, 239 P 2d 995, 997, 998.

### 93-1901-13. (10670) Evidence of good character—when allowed.

#### Action for Slander

In action for slander where complaint alleged that manager of drug store stopped plaintiff in front of store and "maliciously intending to injure the good name and character of plaintiff" accused her of stealing an article from the store and that "by means of said defamatory words the plaintiff has been greatly injured in her good name and character" and answer was general denial and affirmative defense

containing defendant's allegations of what had taken place, there was no issue raised of plaintiff's character so as to permit plaintiff to introduce evidence of her honesty and integrity. *Meinecke v. Skaggs*, 123 M 308, 213 P 2d 237.

Military record or discharge from army or navy as evidence to show character or reputation. 9 ALR 2d 606.

## CHAPTER 20—EVIDENCE, EFFECT OF

### 93-2001-1. (10672) Jury judges of effect of evidence, etc.

#### Subd. 2

##### Operation in General

In deciding the facts of a case the trial

judge could accept "the direct evidence of one witness who is entitled to full credit" to prove any fact and the trial judge was not bound to decide the facts in



conformity with the declarations of any number of witnesses, who did not produce conviction in his mind, against a less number, or against a presumption or other evidence satisfying his mind. *Davis v. Burton*, 128 M 434, 278 P 2d 213, 218.

Whether sworn testimony to the contrary is sufficient to rebut a statutory presumption is a question for the triers of fact to determine, except where the facts proved are overwhelmingly against the presumed facts and permit of but one rational and reasonable conclusion. *State v. Rice*, — M —, 329 P 2d 451, 455.

#### Subd. 3

##### All Parts of Testimony Not Necessarily Rejected

Although court was satisfied that testimony on one point was deliberately false, it would only furnish grounds for distrusting other parts of the witness's testimony and would not necessarily call for a rejection of all of it. *Sanders v. Sanders*, 124 M 595, 229 P 2d 164, 166.

In separate maintenance action by wife where evidence on most points was in sharp conflict, if the court thought some of plaintiff's story incredible the most it could have done was to treat the rest of her testimony with distrust, the court was not bound to disregard all of her testimony. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 858.

#### Subd. 4

##### Instructions Based on This Subdivision

Where the defense requested instructions as to the effect of accomplice's testimony and there was evidence in the record from which the jury might have concluded that a deputy sheriff was an accomplice of the defendant, the court should have instructed the jury that if they believed the deputy sheriff was an

accomplice then they must weigh his evidence as provided by this section and that such evidence must be corroborated as required by section 94-7220. *State v. Porter*, 125 M 503, 242 P 2d 984, 990.

#### Subd. 5

##### Burden of Proof

In an action to cancel and terminate a lease, the burden was on the plaintiffs to prove, by a preponderance of the evidence, that the defendants had violated the lease as charged in the complaint. *Davis v. Burton*, 128 M 434, 278 P 2d 213, 218.

#### Subd. 7

##### Operation in General

In an action to quiet title and establish a boundary, and the plaintiff and the defendant each had a survey made but the defendant did not produce any evidence of his survey the court was justified in finding the survey as made by the plaintiff correct. *Reel v. Walter*, 131 M 382, 309 P 2d 1027, 1030.

#### References

Cited in *Wood v. Jaeger*, 128 M 235, 272 P 2d 725, 727; *McDonald v. Peters*, 128 M 241, 272 P 2d 730, 731; *In re Vincent's Estate*, 133 M 424, 324 P 2d 403, 410; *Deich v. Deich*, — M —, 323 P 2d 35, 42.

Propriety of instruction mentioning or suggesting specific sum as damages in death action. 2 ALR 2d 454.

Modern view as to propriety and correctness of instructions referable to maxim "falsus in uno, falsus in omnibus." 4 ALR 2d 1077.

Propriety of instructions in will contest defining natural objects of testator's bounty. 11 ALR 2d 731.

Instruction requiring or permitting consideration of changes in cost of living or in purchasing power of money in fixing damages. 12 ALR 2d 611.

## CHAPTER 2101—EVIDENCE—WITNESSES—RIGHTS AND DUTIES

### 93-2101-3. (10675) Right of witnesses to protection.

#### Depositions

Under order to perpetuate testimony by taking depositions, it is not proper for attorney to request that witness have books,

papers and accounts which might throw light on the facts expected to be proved. *State ex rel. Woodard v. District Court*, 120 M 585, 189 P 2d 998, 1000.

## CHAPTER 2201—EVIDENCE—RULES IN PARTICULAR CASES

### 93-2201-3. (10682) Objections to tender must be specified.

#### When Tender Unnecessary

In action for specific performance by lessee having option to purchase real prop-

erty, tender could not be objected to where it was evident that defendants would not have conveyed property no matter what

was done in the way of a tender and no objection was made to the tender at the

time it was made. *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968, 974.

### 93-2201-5. (10684) **Compromise offer of no avail.**

#### **Evidence Inadmissible**

Evidence of compromise negotiations should not be admitted. *Gamble-Skogmo, Inc. v. McNair Realty Co.*, 98 F Supp 440.

#### **Operation and Effect**

An "offer to do equity" in the answer when not accepted can not be used in evidence nor can it be regarded as an admission that defendants had waived any of their defenses. *Rachou v. McQuitty*, 125 M 1, 229 P 2d 965, 970.

## CHAPTER 2301—EVIDENCE—PROCEEDINGS TO PERPETUATE TESTIMONY

### 93-2301-1. (10686) **Evidence may be perpetuated.**

#### **Objection to Order**

Where order of court on application to perpetuate testimony was complained of the remedy was to apply to the court to vacate or modify the order under section 93-8405 and not by direct application to the supreme court for a writ of certiorari. *State ex rel. Woodard v. District Court*, 120 M 585, 189 P 2d 998, 1001; *State ex*

*rel. Lichte v. District Court*, 121 M 34, 189 P 2d 1004, 1008.

#### **Purpose**

An application under this statute must be made in good faith for the purpose of obtaining, preserving and using material testimony. *State ex rel. Woodard v. District Court*, 120 M 585, 189 P 2d 998, 1000.

### 93-2301-2. (10687) **Manner of application for order.**

#### **Issue to be Shown**

Where a deposition is to be taken an issue should be tendered by the affidavit, application or complaint, sufficiently definite to disclose that the testimony sought is relevant and pertinent to the framed or proposed issue. *State ex rel. Woodard v. District Court*, 120 M 585, 189 P 2d 998, 1001.

#### **Request for Papers**

Under order to perpetuate testimony by taking depositions, it is not proper for attorney to request that witness have books, papers and accounts which might throw light on the facts expected to be proved. *State ex rel. Woodard v. District Court*, 120 M 585, 189 P 2d 998, 1000.

### 93-2301-4. (10689) **Manner of taking the deposition.**

#### **Production of Records**

Where no subpoena duces tecum has been issued witness named in application for perpetuation of testimony cannot be

compelled to bring before the magistrate the records, books and papers. *State ex rel. Woodard v. District Court*, 120 M 585, 189 P 2d 998, 1001.

### 93-2301-6. (10691) **When the evidence may be produced.**

#### **Operation and Effect**

Deposition may only be taken where the application therefor is made in good faith for the purpose of obtaining, preserving and using material testimony. *State ex rel. Neilson v. District Court*, 128 M 445, 277 P 2d 536, 539. (Dissenting opinion, 128 M 445, 277 P 2d 536, 540.)

purpose of ascertaining the financial capabilities of the party, it should be denied. *State ex rel. Neilson v. District Court*, 128 M 445, 277 P 2d 536, 539. (Dissenting opinion, 128 M 445, 277 P 2d 536, 540.)

#### **Privilege Against Self Incrimination**

#### **Petition for Deposition**

Where a petition for the taking of a deposition is barren of any allegation that it is sought for the purpose of perpetuating his testimony or that it is sought for use at a contemplated trial in the event that such person at that time would be unable to give testimony, and in fact the petition shows that it is for the

Where petition for deposition alleges facts which show that the person whose testimony is desired could be charged with a felony; to compel the person to so testify would be a violation of sec. 18, Art. III of the Constitution. *State ex rel. Neilson v. District Court*, 128 M 445, 277 P 2d 536, 539. (Dissenting opinion, 128 M 445, 277 P 2d 536, 540.)

CHAPTER 2501—QUESTIONS OF FACT AND LAW—DECISION OF

**93-2501-1. (10698) Questions of fact to be decided by the jury, etc.**

**References**

Cited in *Wood v. Jaeger*, 128 M 235, 272 P 2d 725, 727; *McDonald v. Peters*, 128 M 241, 272 P 2d 730, 731.

Increase of risk for manufacture or sale of intoxicating liquor as question of fact. 2 ALR 2d 1163.

Contributory negligence failing to comply with statute regulating travel by pedestrian along highway as question for the jury. 4 ALR 2d 1258.

Question for jury as to liability of

building or construction contractor for injury or damage to third person occurring after completion and acceptance of the work. 13 ALR 2d 191.

Question for court or jury as to clause in life, accident, or health policy excluding or limiting liability in case of insured's use of intoxicants or narcotics. 13 ALR 2d 1014.

Shipper's intent to ratify carrier's unauthorized delivery or misdelivery as question of law or fact. 15 ALR 2d 812.

**93-2501-2. (10699) Questions of law addressed to the court.**

**Judicial Notice**

The jury, as part of the court, may take notice of the general geography of Montana and of the boundaries and limits of the various political subdivisions of the state. *State v. Williams*, 122 M 279, 202 P 2d 245, 246.

**Operation and Effect**

Where the court took judicial notice that vodka was an intoxicating liquor the court was correct in instructing the jury that the drink known as "vodka squirt" and "vodka collins" are intoxicating liquors. *State v. Wild*, 130 M 476, 305 P 2d 325, 334.





















# REVISED CODES OF MONTANA

**VOLUME 8**  
**1959 Cumulative Pocket Supplement**

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE  
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME  
THROUGH VOLUME 333, PACIFIC  
REPORTER (2ND SERIES)

*Edited by*

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

*Editorial Supervisor*

WESLEY W. WERTZ

**THE ALLEN SMITH COMPANY**

Publishers  
Indianapolis, Indiana



COPYRIGHT 1959  
*by*  
THE ALLEN SMITH COMPANY



## NEW LAWS IN VOLUME 8

For index see pocket supplement to Replacement Volume 9

### ENACTED IN 1949

Endurance horse races prohibited, 94-35-258, 94-35-259.  
Intoxicating liquors, sale to minors, 94-35-106, 94-35-106.1.  
Slot machines prohibited, 94-2429 to 94-2432.  
State tax stamps, failure to affix or cancel, removal, counterfeiting, 94-35-260.

### ENACTED IN 1951

Political pamphlets required to contain name of publisher, 94-1475, 94-1476.  
Reciprocal enforcement of support, 94-901-1 to 94-901-18.  
Sodomy, when child not an accomplice, 94-4120.  
Subversive organizations, 94-4411 to 94-4427.

### ENACTED IN 1953

Altering, defacing, or removing serial numbers on farm machinery, importing, selling, 94-35-261 to 94-35-263.  
Furnishing certain articles to prisoners in state prison, 94-35-264.  
Regulation of production and distribution of prison made goods, 94-35-152.1 to 94-35-152.18.

### ENACTED IN 1955

Abandonment of ice boxes, 94-35-265.  
Hunting in careless or reckless manner, 94-35-269.  
Presentence investigation and sentences of the court, 94-7831 to 94-7834.  
Probation, Parole and Executive Clemency Act, 94-9821 to 94-9851.

### ENACTED IN 1957

Delivery of toxic grains to public warehouse, 94-35-270, 94-35-271.  
Guaranteed arrest bond certificates in lieu of cash bail, 94-8508 to 94-8510.  
Minors, possession of beer or liquor, 94-35-106.2.  
Switch blade knife, 94-35-273.  
Unlawful operation or use of aircraft, 94-35-272.

### ENACTED IN 1959

Coloration of wheat, oats, rye or barley treated with injurious substance, 94-35-271.1 to 94-35-271.3.  
Disqualification of judge in criminal proceeding, 94-6913.  
False representation to induce employment as advertising agency for sale of real property, 94-1822.  
Roadblocks on highways, establishing, 94-6029 to 94-6033.  
Sentences for misdemeanors, confinement with parole during employment hours, 94-7835 to 94-7841.  
Western interstate corrections compact, 94-8019 to 94-8023.

## AMENDMENTS IN VOLUME 8

Attorney for accused, compensation, 94-6513.  
Burglary, 94-901, 94-904.  
Civil rights of convicts, 94-4720.

## AMENDMENTS IN VOLUME 8 (Continued)

Coroner's inquests, 94-201-6.  
False pretenses, 94-1805.  
Fraudulent checks, 94-2702.  
Infamous crime against nature, 94-4120.  
Injury to trees on public lands, 94-3334.  
Lewd and lascivious acts upon children, 94-4106.  
Mescal button, dispensing, 94-35-123.  
Nuisances, 94-1002.  
Obscene literature, 94-3601, 94-3602.  
Privileged communications, newspapers, radio or television, 94-2807.  
Proceedings on plea of guilty or on conviction, 94-100-25.  
State director of probation and parole, 94-9825.  
Suspending of sentence, 94-7821, 94-7822, 94-7824.  
Witnesses from without state, 94-9003.

# MONTANA REVISED CODES

## TITLE 94—CRIMES AND CRIMINAL PROCEDURE

- Chapter 9. Burglary and housebreaking—possession of burglarious instruments and deadly weapons, 94-901, 94-904.
10. Common nuisances—maintenance in connection with selling intoxicating liquors—opium—prostitution and gambling, 94-1002.
  14. Election frauds and offenses—Corrupt Practices Act, 94-1475, 94-1476.
  18. False personation and cheats, 94-1805, 94-1822.
  24. Gambling, 94-2429 to 94-2432.
  27. Larceny and falsification of public records and jury lists, 94-2702.
  28. Libel, 94-2807.
  33. Malicious mischief generally, 94-3334.
  35. Miscellaneous offenses, 94-35-106 to 94-35-106.2, 94-35-123, 94-35-152.1 to 94-35-152.18, 94-35-258 to 94-35-265, 94-35-269 to 94-35-273.
  36. Obscenity—literature—indecent exposure—houses of ill fame—prohibition of certain advertisements, 94-3601, 94-3602.
  41. Rape and other sexual crimes, 94-4106, 94-4120.
  44. Sedition—criminal syndicalism—display of red flag—subversive organizations, 94-4411 to 94-4427.
  47. Punishments—attempts and other general provisions, 94-4720.
  60. Arrests—by whom and how made—close pursuit—retaking after escape, 94-6029 to 94-6033.
  65. Arraignment of defendant, 94-6513.
  69. Change of place of trial or judge, 94-6913.
  78. Judgment—suspension of sentence and probation, 94-7821, 94-7822, 94-7824, 94-7831 to 94-7841.
  80. The execution, 94-8019 to 94-8023.
  85. Bail on indictment or information before conviction, 94-8508 to 94-8510.
  90. Witnesses from without state—how secured in criminal proceedings, 94-9003.
  98. Probation, parole and clemency, 94-9821 to 94-9851.
  100. Justices' and police court proceedings—appeals, 94-100-25.
  201. Coroner's inquests, 94-201-6.
  901. Reciprocal enforcement of support, 94-901-1 to 94-901-18.

## CHAPTER 1—DEFINITIONS AND PRELIMINARY PROVISIONS

### 94-107. (10716) Proceedings to impeach or remove officers, etc.

#### References

Cited in State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

### 94-114. (10723) Felony and misdemeanor defined.

#### References

Cited or applied in State ex rel. Borberg

v. District Court, 125 M 481, 240 P 2d 854, 856.

### 94-116. (10725) Punishment of misdemeanor, etc.

#### References

Cited or applied in State ex rel. Borberg

v. District Court, 125 M 481, 240 P 2d 854, 856.

### 94-117. (10726) To constitute crime there must be unity of act, etc.

#### Criminal Negligence

Insofar as the offense of involuntary manslaughter is concerned under section 94-2507, the proof of culpability is sup-

plied by evidence of criminal negligence. State v. Strobel, 130 M 442, 304 P 2d 606, 617.



It is wholly unnecessary in involuntary manslaughter cases to superimpose upon the requirement of the element of criminal negligence the further requirement that a determination must be made as to whether the act resulting in death might ordinarily be classified as malum in se or merely malum prohibitum, for, if that act is done in a manner which is criminally negligent, it thereby becomes malum in se and thereby includes the element of mens rea. *State v. Strobel*, 130 M 442, 304 P 2d 606, 617.

Under a prosecution for involuntary manslaughter, irrespective of the character of the unlawful act, whether malum in se or merely malum prohibitum, the criminality of the act resulting in death is established if that act was done negligently in such a manner as to evince a disregard for human life or an indifference to consequences. *State v. Strobel*, 130 M 442, 304 P 2d 606, 617.

### 94-119. (10728) Drunkenness no excuse for crime, etc.

#### References

Cited or applied in *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1062 (dissent-

ing opinion); *State v. Zumwalt*, 129 M 529, 291 P 2d 257, 261.

## CHAPTER 2—PERSONS LIABLE TO PUNISHMENT— PARTIES TO CRIME

### 94-201. (10729) Who are capable of committing crimes.

#### Instructions

Refusal to give instruction under subd. 6 of this section was not reversible error in view of other instructions given. *State v. Allison*, 122 M 120, 199 P 2d 279, 289.

#### References

Cited or applied in *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1062 (dissenting opinion); *State v. Smith*, 126 M 124, 246 P 2d 227, 228.

### 94-204. (10732) Who are principals.

#### Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show the defendant's guilt that he aided or abetted in the commission of the crime. *State v. Maciel*, 130 M 569, 305 P 2d 335, 336.

#### Felony Murder Rule

Where defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit arson makes all the conspirators in the arson plot equally guilty of first degree murder. *State v. Morran*, 131 M 17, 306 P 2d 679.

#### Instructions

Where a verbal declaration of one co-defendant that he and the other codefendant were partners was given in evidence,

it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and section 94-6423, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. *State v. Keller*, 126 M 142, 246 P 2d 817, 821.

#### Operation and Effect

Under this section and section 94-6423, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. *State v. Simon*, 126 M 218, 247 P 2d 481, 484.

#### References

Cited or applied in *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1015.

## CHAPTER 3—ABANDONMENT AND NEGLECT OF WIFE AND CHILDREN

### 94-301. (11017) Abandonment or failure to support wife and children, etc.

#### References

Cited or applied in *State v. McBane*, 128 M 369, 275 P 2d 218, 221.

**94-302. (11018) Orders which may be entered by the court.**

**Cross-Reference**

Enforcement of support orders of other states, secs. 94-901-1 to 94-901-18.

**References**

Cited or applied in *State v. McBane*, 128 M 369, 275 P 2d 218, 219, 221.

**94-304. (11020) Desertion or abandonment of children a felony, etc.**

**Change of Plea of Guilty**

Where defendant was charged with desertion of minor children and upon arraignment the defendant indicated that he wanted to plead guilty and court read him this section making it a felony to desert and abandon children under 15 years of age, and also sections 94-301 and 94-302 which make it a misdemeanor to omit without lawful excuse to furnish

necessary board, clothing, shelter or medical attention to children under the age of 16 years, the court abused its discretion in refusing to grant the defendant's motion to change his plea of guilty since there was a misunderstanding as to what the defendant pleaded guilty. *State v. McBane*, 128 M 369, 275 P 2d 218. (Dissenting opinion, 128 M 369, 275 P 2d 218, 222.)

**94-306. (11022) Cruelty to children.**

Failure to provide medical attention for child as criminal negligence. 12 ALR 2d 1047.

CHAPTER 4—ABORTION

**94-401. (11023) Administering drugs, etc., with intent to, etc.**

Admissibility of evidence of commission of similar crimes in prosecution based on abortion. 15 ALR 2d 1080.

Necessity, to warrant conviction of abortion, that fetus be living at time of commission of acts. 16 ALR 2d 949.

CHAPTER 6—ASSAULTS

**94-601. (10976) Assault in the first degree defined—penalty.**

**Criminal Intent**

The element of felonious intent in every contested criminal case must necessarily be determined from the facts and circumstances of the particular case, this for the reason that criminal intent, being a state of mind, is rarely susceptible of direct or positive proof and therefore must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence. *State v. Madden*, 128 M 408, 276 P 2d 974, 978.

**Operation and Effect**

In a prosecution for assault in the first or second degree the prosecution had to prove by satisfactory evidence, that when the defendant pointed a gun at a person he intended to commit a felony upon that person; instructions defining the felony must be given to the jury so that the jury can determine if the evidence showed such intended felony. *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1059 (the court was not in agreement on this however, see the dissenting opinions of two judges on pages 1060, 1063).

**Penalty**

Defendant charged with assault in first degree was properly sentenced to state prison for 18 years which was within the statutory term for the offense of which the jury found him guilty and during trial on first day of assault charge he pleaded guilty to three prior felony convictions charged in same information charging assault in first degree. *State v. McLeod*, 131 M 478, 311 P 2d 400, 408.

**Sufficiency of Information**

Trial court did not err in overruling defendant's demurrer to amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, where the amended information complied with the requirements of sections 94-6401, 94-6403 to 94-6405 and 94-6412. *State v. McLeod*, 131 M 478, 311 P 2d 400, 406.

**References**

Cited or applied in *State v. Smith*, 126 M 124, 246 P 2d 227, 228.

Indecent proposal to woman as criminal assault. 12 ALR 2d 971.

**94-602. (10977) Assault in second degree.****Instructions on This Section**

Instructions defining the felony intended to be committed must be given to the jury in a prosecution of assault in the first or second degree so that the jury may determine if the evidence showed an intended felony. *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1059.

**Subd. 4****Operation and Effect**

Evidence was insufficient to justify a conviction of second degree assault with a deadly weapon where it was disclosed that the defendant was hunting jack rabbits at the time; that he never knew the prosecuting witness prior to the day of the alleged assault; that the rifle was extremely sensitive and would fire upon being brushed against an object such as clothing or even a change in temperature might fire the gun; and that the defendant was an instructor in firearms in the army during the war and would not have missed from the distance of eight feet had he been aiming at the prosecuting witness. *State v. Smith*, 126 M 124, 246 P 2d 227, 228.

Evidence was sufficient to justify a conviction under this section when it was shown that defendant was with a group of boys who fired a barrage of shots at a house and some of the pellets hit the house; the fact that the prosecuting witness had moved to a position away from the line of fire did not prevent the attack

from being an assault upon him and sustained the charge that the guns were fired toward him and in his direction. *State v. Simon*, 126 M 218, 247 P 2d 481, 482, 483, 484.

**Proof of Offense Different Than That Charged**

Where defendant was charged with assault in the second degree as defined in subd. 4, it was error to introduce evidence that the defendant in pointing the firearm was resisting a lawful arrest by the sheriff in violation of subd. 5. *State v. Storm*, 124 M 102, 220 P 2d 674, 675.

**Sufficiency of Evidence**

Where evidence did not show that defendant pointed gun at sheriff after he was handed paper by deputy which purported to be a warrant, evidence was insufficient to support a conviction under either subd. 4 or 5 of this section. *State v. Storm*, 124 M 102, 220 P 2d 674, 678.

**Sufficiency of Information**

Information charging defendant with unlawfully threatening another by pointing a loaded revolver at him charged a criminal offense. *State v. Storm*, 124 M 102, 220 P 2d 674, 675.

**References**

Cited or applied in *State ex rel. Neilson v. District Court*, 128 M 445, 277 P 2d 536, 539.

**94-603. (10978) Assault in third degree.****Instructions**

It was error to refuse defendant's instructions defining assault in the third degree, and instead instructing the jury as to assault in the first and second degree but omitting any instructions defining what felony was intended to be committed by assaulting a person with a

gun. Since the jury had no way of knowing what felony, if any, the defendant intended to commit upon a person by pointing a gun at him, the jury should have been allowed to consider whether or not defendant was guilty of third degree assault. *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1059.

**94-605. (10980) Use of force not unlawful.****Subd. 3****Operation and Effect**

Evidence failed to justify a conviction of assault with a deadly weapon when it was shown that the defendant was merely exercising force in defense of his home, inasmuch as the prosecuting witness came to defendant's cabin in the company of

another fellow who had intruded in defendant's home and lived there without defendant's permission and who the defendant had to forcibly evict, and also someone had been stealing log poles from the defendant. *State v. Nickerson*, 126 M 157, 247 P 2d 188, 192, 193.

## CHAPTER 7—BIGAMY AND INCEST

**94-705. (11029) Incest.****Amendment of Information**

There was no substantial change in the

charge where the court allowed the state to amend an information charging defend-



ant with incest by changing "fornication" to "adultery." Whether the defendant was married and unmarried at the time is not a material ingredient of the offense. In

either event the defendant is guilty, if the intercourse charged is proved. *State v. Kuntz*, 130 M 126, 295 P 2d 707, 710.

## CHAPTER 8—BRIBERY AND CORRUPTION

### 94-804. (10856) Improper attempts to influence jurors, referees, etc.

#### Operation and Effect

Where the evidence discloses that the defendant conversed with a grand juror privately at the latter's home it can not

be construed to be in the regular course of proceedings and thus within the exception to this section. *State v. Porter*, 125 M 503, 242 P 2d 984, 990.

### 94-806. (10858) Embracery.

#### Operation and Effect

After a person has been discharged as a grand juror, the crime of embracery could not be committed even though the de-

fendant thought he was influencing a grand juror. *State v. Porter*, 125 M 503, 242 P 2d 984, 987.

## CHAPTER 9—BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS

Section 94-901. Burglary defined.

94-904. Word "enter" defined.

**94-901. (11346) Burglary defined.** Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, out-house, or other building, tent, motor vehicle and aircraft, vessel, or railroad car, with intent to commit grand or petit larceny or any felony, is guilty of burglary.

**History:** Ap. p. Sec. 58, p. 188, *Bannack Stat.*; re-en. Sec. 69, p. 231, *Cod. Stat.* 1871; re-en. Sec. 69, 4th Div. Rev. Stat. 1879; amd. Sec. 1, p. 50, L. 1885; re-en. Sec. 73, 4th Div. Comp. Stat. 1887; amd. Sec. 820, Pen. C. 1895; re-en. Sec. 8620, Rev. C. 1907; re-en. Sec. 11346, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1949; amd. Sec. 1, Ch. 17, L. 1957. Cal. Pen. C. Sec. 459.

#### Amendments

The 1949 amendment inserted the word "automobile" and the word "or" before "railroad car."

The 1957 amendment substituted the words "motor vehicle and aircraft" for the word "automobile."

#### Effective Date

Section 2 of Ch. 17, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 18, 1957.

#### Truck

The legislature has made it clear that an automobile and truck are to be considered two distinct and separate vehicles for registration and tax purposes. It does not make sense to hold that the legislature intended, in making entry into an automobile burglary, to have intended the word "automobile" as a general term, and to include automobiles, trucks, busses and the like. Had the legislature intended to use a general term, it would have used the term "motor vehicle." Certainly no interpretation should be given any word which would make an act a crime unless it is clear that the legislature intended that interpretation should be given such word. *State v. Duran*, 127 M 233, 259 P 2d 1051, 1052. (See, however, the dissenting opinion, 127 M 233, 259 P 2d 1051, 1054.)

#### References

Cited in *State v. Allison*, 122 M 120, 199 P 2d 279, 299; *State v. Fitzpatrick*, 125 M 448, 239 P 2d 529.

### 94-902. (11347) Degrees of burglary.

**Failure to Prove Time Crime Was Committed**

Where the information alleges night-

time or first degree burglary it is essential that the state prove the crime occurred during the nighttime as provided in sec-

tion 94-905. When the evidence is that the crime took place sometime between 3:15 a.m. and 8:00 a.m. and that on the particular day the sun rose at 5:56 a.m.

a conviction of nighttime burglary cannot stand. *State v. Fitzpatrick*, 125 M 448, 239 P 2d 529.

**94-904. (11349) Word "enter" defined.** The word "enter," as used in this chapter, includes the entrance of the offender into such house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, automobile, vessel, or railroad car, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, or used or intended to be used, to threaten or intimidate the inmates, or to detach or remove the property.

**History:** En. Sec. 823, Pen. C. 1895; re-en. Sec. 8623, Rev. C. 1907; re-en. Sec. 11349, R. C. M. 1921; amd. Sec. 2, Ch. 126, L. 1949.

#### **Amendment**

The 1949 amendment inserted the words "store, mill, barn" and the word "automobile."

#### **Repealing Clause**

Section 3 of Ch. 126, Laws 1949 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 4 of Ch. 126, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

### **94-905. (11350) Nighttime defined.**

#### **Operation and Effect**

When an information charges nighttime or first degree burglary, proof that the crime occurred in the period between

sunset and sunrise is essential in order to convict the defendant. *State v. Fitzpatrick*, 125 M 448, 239 P 2d 529.

## **CHAPTER 10—COMMON NUISANCES—MAINTENANCE IN CONNECTION WITH SELLING INTOXICATING LIQUORS—OPIUM—PROSTITUTION AND GAMBLING**

Section 94-1002. Certain buildings declared nuisances.

### **94-1001. (11123) Definition of "person" and "building."**

#### **Operation and Effect**

Actions for the prosecution of gambling laws may be prosecuted under either of these sections or under sections 94-2401 and 94-2404, or under each and all of such sections. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 1000.

Fact that county attorney proceeded

under this law for abatement of gambling nuisance, rather than under sections 94-2401 and 94-2404 for criminal punishment, is not a matter of which the defendant can complain on appeal. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 1000.

**94-1002. (11124) Certain buildings declared nuisances.** Every building or place or tract of land under one ownership used for the purpose of lewdness, assignation, or prostitution, and every building or place or tract of land under one ownership wherein or upon which acts of lewdness, assignation, or prostitution are held or occur, and any building, place or tract of land under one ownership wherein or upon which gambling or those other illegal acts prohibited by chapter 24 and chapter 30, Title 94 Revised Codes of Montana, 1947, are carried on or occurs, contrary to any of the laws of the state of Montana, or wherein any wine rooms are conducted or maintained, contrary to the laws of the state of Montana, or wherein any opium or coca leaves, their salts, derivatives, and preparations thereof are sold or given away or used contrary to the laws of the state of Montana,

is a nuisance which shall be enjoined, abated, and prevented as hereinafter provided, whether the same be a public or private nuisance.

**History:** En. Sec. 2, Ch. 95, L. 1917; amd. Sec. 1, Ch. 76, L. 1921; re-en. Sec. 11124, R. C. M. 1921; amd. Sec. 1, Ch. 268, L. 1959.

#### Amendment

The 1959 amendment inserted the words "or tract of land under one ownership" the first two times it appears and substituted the words "place or tract of land under one ownership wherein or upon which gambling or those other illegal acts prohibited by chapter 24 and chapter 30, Title 94 Revised Codes of Montana, 1947, are" for the words "wherein gambling is."

#### Repealing Clause

Section 2 of Ch. 268, Laws 1959 repealed all acts or parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 268, Laws 1959 provided the act should be in effect from and

after its passage and approval. Approved March 16, 1959.

#### Cross-Reference

See note to sec. 94-1004. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307; State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

#### Punch Boards

Premises wherein punch boards are operated may be abated as a nuisance inasmuch as punch boards constitute a lottery and play at lottery is gambling. Sections 84-5701, 84-5702 (since repealed) and 94-2401 which assume to authorize the use of punch boards as trade stimulators violate § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries, and therefore are invalid and do not prevent the abatement of the premises as a nuisance. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

### 94-1003. (11125) County attorney to abate nuisance, etc.

#### References

Cited or applied in Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 584;

State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

### 94-1004. (11126) Verification of complaint—temporary injunction.

#### Law Applicable

The procedure for the abatement of a nuisance per se provided by the statute is that set forth by this law and the general procedure for the issuance of an injunction in ordinary civil cases has no application. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

#### Order Quashing Injunction Appealable

Where temporary injunction enjoining defendant from conducting the business constituting a nuisance as described in the complaint was quashed same day of issuance and an order issued enjoining defendant from operating "any of the games of chance described in the complaint contrary to the laws of the State of Montana," such order was appealable. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

#### Quashing Injunction Prior to Hearing

Where complaint and affidavits showed prima facie that premises constituted a nuisance per se, it was error to quash the temporary injunction issued thereunder when defendant filed affidavit under provisions of section 93-4211, but injunction should have remained in effect until a hearing was had. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

#### Verified Complaint

A complaint filed by a person other than the county attorney, if verified on information and belief pursuant to section 93-3702, is sufficient for the issuance of a temporary injunction. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

### 94-1009. (11131) Owner may give bond—terms of bond, etc.

#### Operation and Effect

This section did not give authority to court to order the return of the property to the owners where sheriff in executing judgment made return of no gambling equipment found notwithstanding that defendants had stipulated that gambling

equipment was in their possession. State ex rel. Olsen v. Craven Cigar Store, 124 M 310, 220 P 2d 1029, 1033.

#### References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 142.



CHAPTER 11—CRIMINAL CONSPIRACY AND ILLEGAL PRACTICES IN  
RESTRAINT OF TRADE—TRUSTS—DISCRIMINATIONS—POOLING  
GRAIN WAREHOUSES—DESTROYING FOOD

**94-1101. (10898) Criminal conspiracy defined and punishment fixed.**

**References**

Cited or applied in *State v. Simon*,  
126 M 218, 247 P 2d 481, 485.

Bill of particulars to one accused of  
conspiracy to overthrow government. 5  
ALR 2d 496.

**94-1104. (10901) Unlawful trusts and monopolies—penalty.**

**Insurance Business**

Since this section prohibits conspiracies  
in restraint of trade in the insurance busi-  
ness, federal district court, because of the  
provisions of the McCarran Act (15 U.  
S. C. § 1 et seq.), would have no jurisdic-

tion of a suit for violation of the Sherman  
and Clayton Acts involving the business of  
insurance, unless the suit fell within an  
exception to the McCarran Act. Profes-  
sional & Business Men's Life Ins. Co. v.  
Bankers Life Co., 163 F Supp 274, 280.

CHAPTER 14—ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section 94-1475. Political literature to contain name of officer of organization or person  
publishing and producing.

94-1476. Violation of preceding section a misdemeanor.

**94-1454. (10800) Political criminal libel.**

**Compiler's Note**

This section may be partially superseded  
by sec. 94-1475.

**94-1475. Political literature to contain name of officer of organization  
or person publishing and producing.** It shall be unlawful for any person  
to publish, print, mimeograph, type or otherwise produce any dodger, bill,  
handbill, pamphlet or other document which is designed to aid, injure or  
defeat any candidate or any political party or organization or measure  
before the people unless it is stated therein the name of the chairman or  
secretary, or the names of the other officers of the political or other organi-  
zation publishing, printing, mimeographing, typing or otherwise producing  
such dodger, bill, handbill, pamphlet or other document or the name of  
some voter who is responsible therefor with his residence and street address,  
if any, together with the name of the publisher, printer or the producer  
thereof with his residence and street address, if any, or his place of business.

**History:** En. Sec. 1, Ch. 74, L. 1951.

**Title of Act**

An act making it unlawful for any  
person to publish, print, mimeograph, type  
or otherwise produce any dodger, bill, hand-  
bill, pamphlet or other document designed  
to aid, injure or defeat any candidate or  
any political party or organization or  
measure before the people, unless it is  
stated therein the name of the chairman  
or secretary, or the names of the other

officers of the political or other organiza-  
tion producing the same, or the name of  
some voter who is responsible therefor  
with his residence and street address, if  
any, together with the name of the pub-  
lisher, printer or other producer thereof  
with his residence and street address, if  
any, or his place of business, and providing  
that violation thereof shall constitute a  
misdemeanor, and repealing all acts and  
parts of acts in conflict herewith.

**94-1476. Violation of preceding section a misdemeanor.** Any person  
who shall violate the provisions of this act shall be guilty of a misdemeanor.

**History:** En. Sec. 2, Ch. 74, L. 1951.

Elections—309.

29 C.J.S. Elections § 334.

**Repealing Clause**

Section 3 of Ch. 74, L. 1951 repealed all  
acts and parts of acts in conflict therewith.

## CHAPTER 18—FALSE PERSONATION AND CHEATS

Section 94-1805. Obtaining money, property or services by false pretenses.

94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty.

**94-1805. (11410) Obtaining money, property or services by false pretenses.** Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, including evidence of indebtedness, or who knowingly and designedly obtains the service of another by false or fraudulent representation or pretenses, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently receives services or gets into possession of money or property, is punishable in the same manner and to the same extent as for larceny of the money or the value of the property or services so obtained.

**History:** En. Sec. 933, Pen. C. 1895; re-en. Sec. 8683, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1921; re-en. Sec. 11410, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1959. Cal. Pen. C. Sec. 532.

#### Amendment

The 1959 amendment inserted the words "or who knowingly and designedly obtains the service of another by false or fraudulent representation or pretenses"; inserted the words "receives services or" and substituted the words "the value of the property or services" for the word "property."

#### Application

A defendant charged under section 94-1806 with obtaining property by means of a confidence game cannot be convicted on evidence which shows that the defendant obtained such property "by false or fraudulent representation or pretenses" under this section because such crimes are separate and distinct offenses. *State v. Allen*, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

#### Evidence of an Offense Not Charged in the Information

When a county officer is charged with collecting illegal fees, by presenting a claim under the name of another to the county for work which was within his duties as county surveyor it was prejudicial error for the court to admit evidence of another claim submitted by the county surveyor to the county which offense was not charged in the information (*Justices Bottomly and Angstman dissenting*). *State v. Hale*, 126 M 326, 249 P 2d 495, 496.

#### Information

Where a statute uses general or generic words in defining the offense the informa-

tion or indictment bottomed upon that statute must specify the particular facts which constitute the offense. *State v. Hale*, 129 M 449, 291 P 2d 229, 232. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

An information may be drawn consistent with this section which is not vulnerable to the objection that it is bad for duplicity for charging an offense under section 94-3908 (presenting fraudulent claim to a county). *State v. Hale*, 129 M 449, 291 P 2d 229, 234. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

Information which avers only that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. *State v. Hale*, 129 M 429, 291 P 2d 229, 232. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

To characterize a representation as "false" or "fraudulent" does not suffice to state the offense. The particulars in which the representations relied upon are false must appear from facts directly and positively set out. *State v. Hale*, 129 M 449, 291 P 2d 229, 231. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

#### Operation and Effect

When a county officer is charged with collecting illegal fees by presenting a claim under the name of another to the county for work which was within his duties as county surveyor, the public policy of this state under section 94-5516 is that, as a matter of defense, the county officer is entitled to offer evidence of his good faith or honest mistake and the value received by the county. *State v. Hale*, 126 M 326, 249 P 2d 495, 496.

#### References

Cited or applied in *State v. Keller*, 126 M 142, 246 P 2d 817, 821.

Obtaining payment by debtor on valid indebtedness by false representation as criminal false pretenses. 20 ALR 2d 1266.

False representations as to income, profits, or productivity of property as fraud. 27 ALR 2d 14.

## 94-1806. (11411) Confidence games.

### Application

Where evidence disclosed that all the defendant did, to induce the complaining witness to give him the ring, was, after she had broached the subject of oil wells, to say, in effect that he had an oil well in Louisiana from which he received \$800 a month income, and that he would cut her in for \$200 of that income. The jury could assume such statements were false, since, according to the complaining witness, neither the first \$200 due July 15th, nor any other was ever paid to her. Defendant should have been prosecuted under section 94-1805 "obtaining money or property by false pretenses," not under this section "confidence games." State v. Allen, 128 M 306, 275 P 2d 200, 205. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

### Confidence or Bunco Game

It is a crime to obtain or attempt to obtain money by the use of a confidence game. State v. Hale, — M —, 328 P 2d 930, 934.

### Construction of Statute

The element of confidence must be pres-

ent in order to maintain an action under this section. State v. Hale, — M —, 328 P 2d 930, 934.

The confidence games described in this section are those whereby an elaborate scheme is developed to play upon the credulity or sympathy or some other trait of the victim. State v. Hale, — M —, 328 P 2d 930, 934.

### Operation and Effect

A defendant charged under this section with obtaining property by means of a confidence or bunco game cannot be convicted on evidence which shows that defendant obtained such property "by false or fraudulent representation or pretenses" under section 94-1805, because such crimes are separate and distinct offenses. State v. Allen, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

### Separate and Distinct Crime

This statute covers a separate and distinct crime from that covered by section 94-2406. State v. Hale, — M —, 328 P 2d 930, 934.

**94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty.** Any person engaged or purporting to be engaged as an advertising agency for real property who accepts or solicits money or other considerations for himself or for any other person, in connection with the execution by an owner of real property of any contract whereby such owner authorizes such person to serve as an advertising agency for the sale of such property, and who for the purpose of inducing the owner of such property to enter into such a contract makes or procures the making of any oral or written representation of fact with respect to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract, with reasonable ground for belief that such representation is not true, or who refrains from disclosing to such owner, any matter of fact pertinent to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract is guilty of a felony and shall be imprisoned for not less than one (1) year nor more than five (5) years.

**History:** En. Sec. 1, Ch. 125, L. 1959.

### Title of Act

An act declaring that the acceptance or solicitation of money or other considerations in connection with any contract for the advertising of real property by misrepresentation or by failing to disclose

facts pertinent to such contract is a felony and prescribing a penalty; containing a repealing clause.

### Repealing Clause

Section 2 of Ch. 125, Laws 1959 repealed all acts and parts of acts in conflict therewith.



## CHAPTER 20—FORGERY AND COUNTERFEITING

**94-2001. (11355) Forgery of wills, conveyances, etc.****Cross-Reference**

State tax stamps, counterfeiting, sec. 94-35-260.

**Act Committed by Indian on Indian Reservation**

State court was without jurisdiction to try an Indian for forgery of a check where the Indian attempted to cash the check on a store located within the boundaries of an Indian Reservation. The defendant is still a ward of the federal government and is still under the exclusive jurisdiction of the federal government for all acts and crimes defined and made punishable by the laws of Congress, when committed within the exterior boundaries of an Indian reservation. State ex rel. Bokas v. District Court, 128 M 37, 270 P 2d 396.

**Non-negotiable Instruments**

The fact that a warrant is non-negotiable does not affect the question as to whether one who passes it when containing a known forged indorsement is guilty of forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

**Passing of Auditor's Warrant**

The statute when speaking of indorsements while not specifically mentioning auditors' warrants does cover "orders."

The indorsement of an auditor's warrant amounts to the indorsement of an order within the meaning of the statute. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

**Testimony of Person Forging Indorsement as Corroboration**

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument, since the person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

**Unnecessary for Instrument to Create Civil Liability**

It is not necessary that the forged instrument should create civil liability before it can be held to be forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

**94-2006. (11360) Possessing or receiving forged or counterfeit bills, etc.****References**

Cited or applied in State v. Rother, 130

M 357, 303 P 2d 393 at 406 (dissenting opinion).

**94-2007. (11361) Making, passing or uttering fictitious bills, etc.****References**

Cited or applied in State v. Rother, 130

M 357, 303 P 2d 393 at 406 (dissenting opinion).

**94-2008. (11362) Counterfeiting coin, bullion, etc.****References**

Cited or applied in State v. Rother, 130

M 357, 303 P 2d 393 at 406 (dissenting opinion).

**94-2010. (11364) Possessing or receiving counterfeit coin, bullion, etc.****References**

Cited or applied in State v. Rother, 130

M 357, 303 P 2d 393 at 406 (dissenting opinion).

**94-2012. (11366) Counterfeiting railroad tickets, etc.****References**

Cited or applied in State v. Rother, 130

M 357, 303 P 2d 393 at 406 (dissenting opinion).

## CHAPTER 24—GAMBLING

- Section 94-2429. Slot machines—possession unlawful.  
 94-2430. Slot machine defined.  
 94-2431. Person or persons defined.  
 94-2432. Penalty for possession or permitting use of slot machine.

**94-2401. (11159) Gambling games prohibited—penalty, etc.****Compiler's Note**

That part of this section which relates to slot machines is probably superseded by secs. 94-2429 to 94-2432.

**Cross-Reference**

See note to sec. 94-2403. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

**Constitutionality**

This act and sections 84-5701, 84-5702 (since repealed) authorizing and licensing so-called trade stimulators is void and invalid as violative of § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141, 142.

**Construction of Amendment**

The 1937 amendment to this section which added the licensing provisions did not affect section 94-2404. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

**Prosecution of Gambling Laws**

Actions for violation of the gambling laws may be prosecuted under either this section and section 94-2404 or under section 94-1001 et seq., the abatement law, or under each and all of such sections. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

**Religious, Fraternal and Charitable Organizations**

Religious, fraternal and charitable organizations and private homes are by section 94-2403 exempt from the payment of license fees but are not exempt from the provisions of this act which existed prior to the 1937 amendment. State ex

**94-2403. Organizations excluded from act.****Construction**

The words "this act" in this section mean the licensing provisions of section 94-2401 which were added by the 1937 Act but not the remainder of such section which was in existence prior to such 1937 amendment. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

**94-2404. (11160) Possession of gambling implements prohibited.****Cross-Reference**

See note to sec. 94-2401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

**Effect of Other Laws**

This section was not affected by the 1937 amendment to section 94-2401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996; State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

**Slot Machines**

Slot machines are not included among the enumerated "hickey" games nor among the "trade stimulators" from which the ban was lifted by the 1937 amendment known as the "Hickey Law." State v. Israel, 124 M 152, 220 P 2d 1003, 1010; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Information charging defendant with the operation of slot machines was not subject to demurrer as not charging an offense. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015, 1016; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

The ban against slot machines was not lifted by sections 84-5701 and 84-5702 (since repealed). State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

The operation of all slot machines is prohibited to all persons without exception. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

**References**

Cited or applied in State v. Read, 124 M 184, 220 P 2d 1020; State v. Tursich, 127 M 504, 267 P 2d 641, 642; State v. Porter, 130 M 299, 300 P 2d 952.

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

**Slot Machines**

There is nothing in this law that makes it lawful for any person or any religious, fraternal or charitable organization, or any private home to run, conduct or keep any slot machine within the state of Montana. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015, 1016; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

**References**

Cited or applied in State v. Read, 124 M 184, 220 P 2d 1020.

**94-2406. (11162) Brace and bunco games prohibited.**

**Confidence or Bunco Game**

Any game which is by this statute outlawed, may be a confidence or bunco game, for the design and conduct of those who use it gives it its character under this statute. *State v. Hale*, — M —, 328 P 2d 930, 936.

**Penalty**

The penalty of violating this statute is imposed upon every person who uses or deals with any game commonly known as a confidence game or bunco, as well as one who wins. *State v. Hale*, — M —, 328 P 2d 930, 933.

**Gambling Devices**

The games described in this section are purported gambling devices so contrived, although masked as legitimate operations, to bilk the victim of his wager by manipulation. These games do not depend upon the active or passive emotions of the victim. *State v. Hale*, — M —, 328 P 2d 930, 934.

**Purpose of Statute**

This statute is aimed at person who uses or deals with a confidence game, or bunco game, and not so much against the inanimate paraphernalia so used. *State v. Hale*, — M —, 328 P 2d 930, 936.

**"Morocco"**

Defendant who used and dealt with game of "Morocco," a confidence game and bunco game, to win money from his victim was properly convicted of the crime prohibited by this section. *State v. Hale*, — M —, 328 P 2d 930, 934, 935.

**Separate and Distinct Crime**

This statute covers a separate and distinct crime from that covered by section 94-1806. *State v. Hale*, — M —, 328 P 2d 930, 934.

**Use of Confidence Game**

It is a crime to use or deal with a confidence game or bunco. *State v. Hale*, — M —, 328 P 2d 930, 934.

**94-2409. (11165) Maintaining gambling apparatus a nuisance.**

**Operation and Effect**

Any article, machine or apparatus maintained or kept in violation of any of the provisions of sections 94-2401 or 94-2404 is a public nuisance. *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

**Slot Machines**

The using, operating, keeping, and maintaining for use, of slot machines constitutes a nuisance. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988; *State v. Israel*, 124 M 152, 220 P 2d 1003, 1011; *State ex rel. Brown v. Buffalo Rapids Club*, 124 M 172, 220 P 2d 1014.

**94-2410. (11166) Duty of public officer to seize gambling implements, etc.**

**Decree Requiring Sale Amended**

Decree requiring sheriff to sell seized slot machines was amended on appeal to require the sheriff to destroy such machines. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 1001.

**References**

Cited or applied in *State v. Israel*, 124 M 152, 220 P 2d 1003, 1011.

Forfeiture of property used in connection with gaming before trial of individual offender. 3 ALR 2d 751.

**94-2411. (11167) Duty of magistrate to retain gambling implement, etc.**

**Return of Machines Erroneous**

It was error for district court to order slot machines and other gambling equipment returned to defendant on an ex parte proceeding before the disposition of the

case and the order is void ab initio. *State v. Israel*, 124 M 152, 220 P 2d 1003, 1009.

**References**

Cited or applied in *State v. Engle*, 124 M 175, 220 P 2d 1015, 1017.

**94-2412. (11167.1) Disposal of moneys confiscated, etc.**

**Cross-Reference**

See note to sec. 94-2411. *State v. Israel*, 124 M 152, 220 P 2d 1003, 1009.

**References**

Cited or applied in *State v. Engle*, 124 M 175, 220 P 2d 1015, 1017.

**94-2413. (11168) Authority to break and enter buildings where games, etc.**

**References**

Cited or applied in *State v. Israel*, 124 M 152, 220 P 2d 1003, 1012.



**94-2414. (11169) Duty of public officer to make complaint.****References**

Cited in *State v. Israel*, 124 M 152,  
220 P 2d 1003, 1012.

**94-2416. (11171) Officers neglecting duty subject to forfeiture of office.****References**

Cited in *State v. Israel*, 124 M 152,  
220 P 2d 1003, 1012.

**94-2417. (11172) Receiving money to protect offenders prohibited.****References**

Cited in *State v. Israel*, 124 M 152,  
220 P 2d 1003, 1012.

**94-2418. (11173) Losses at gambling may be recovered in civil action.**

Assignment of, or succession to, statutory right of action for recovery of money lost at gambling. 18 ALR 2d 999.

**94-2419. (11174) Action may be brought by any dependent person.****References**

Cited or applied in *Miller v. Emerson*,  
120 M 380, 186 P 2d 220.

**94-2423. (11178) Immunity of witnesses.****Privilege or Immunity Must Be Claimed**

Even though it be assumed that the provisions of this section were broad enough to include testimony before a grand jury it would have no application where defendant failed to claim either privilege or immunity when called before the grand jury. *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1023.

**Testimony before Grand Jury**

The words "grand jury" should not be read into this section which gives im-

munity from prosecution to persons testifying before a "court or magistrate." *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1023.

Defendant cannot, because of testimony before grand jury, be immune from prosecution for offense charged in information filed by county attorney weeks before impanelment of a grand jury. *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1023; *State v. McRae*, 124 M 238, 220 P 2d 1025, 1027.

**94-2429. Slot machines—possession unlawful.** From and after the passage and approval of this act, it shall be a misdemeanor and punishable, as hereinafter provided, for any person to use, possess, operate, keep or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever.

**History:** En. Sec. 1, Ch. 197, L. 1949.

**Title of Act**

An act prohibiting the licensing, use, operation, keeping or maintenance of slot machines within the state of Montana; defining certain terms used in this act; providing penalties for the violation of this act and repealing all acts and parts of

acts in conflict herewith; providing for a referendum on this act; and providing for local option elections in counties on the question of the licensing and operation of slot machines and specifying the procedure for holding said election.

Gaming—79(1).

38 C.J.S. Gaming § 99.

**94-2430. Slot machine defined.** A slot machine is hereby defined as a machine operated by inserting a coin, token, chip or trade check therein by the player and from the play of which he obtains, or may obtain, money, checks, chips or tokens redeemable in money. Merchandise vending machines

where the element of chance does not enter into their operation are not within the provisions of this act.

History: En. Sec. 2, Ch. 197, L. 1949.

**94-2431. Person or persons defined.** In addition to their ordinary meaning, the word "person" or "persons," as used in this act, shall include both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders and societies, including religious, fraternal and charitable organizations.

History: En. Sec. 3, Ch. 197, L. 1949.

**94-2432. Penalty for possession or permitting use of slot machine.** Any person, partnership, club, society, fraternal order, corporation, co-operative association or any other person, individual or organization who violates any of the provisions of this act, or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied or controlled by him or it, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 197, L. 1949.

#### Repealing Clause—Effective Date

Section 5 of Ch. 197, L. 1949 read, "All acts and parts of acts in conflict herewith, particularly all laws of this state and all ordinances of cities and towns relating to the issuance of licenses for the operation of slot machines, are hereby repealed and this act shall take effect and be in force and effect on and after the 31st day of December, 1950, as to sections 1 to 6, inclusive, provided a majority of the votes cast on this issue are against the operation of slot machines, and if a majority of the votes so cast are

for the operation of slot machines, the act shall be in effect on said date as to sections 8 to 15, inclusive." At the general election in November, 1950, the majority of votes was against the operation of slot machines. Sections 7 to 16 of Ch. 197, L. 1949 are therefore omitted.

#### Separability of Provisions

Section 6 of Ch. 197, L. 1949 read, "If any part of this act shall be declared by any court of competent jurisdiction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

### CHAPTER 25—HOMICIDE

#### 94-2501. (10953) Murder defined.

##### References

Cited or applied in *State v. London*, 131 M 410, 310 P 2d 571.

#### 94-2502. (10954) Malice defined—express or implied.

##### Operation and Effect

It is not necessary to show pre-existing malice against the deceased and malice may be shown directly or may be inferred from a lack of provocation. *State v. London*, 131 M 410, 310 P 2d 571, 582.

Malice may be express or implied and on proof of homicide by the defendant, malice is presumed, but the presumption does not exist in the presence of evidence tending

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

to show that the act amounts only to manslaughter. *State v. Rivers*, 133 M 129, 320 P 2d 1004, 1006.

##### References

Cited or applied in *State v. Dillon*, 125 M 24, 230 P 2d 764, 767.

Inference of malice or intent to kill where killing is by blow without weapon. 22 ALR 2d 854.

**94-2503. (10955) Degrees of murder.****Felony-murder Rule**

Where the evidence disclosed that the defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit arson makes all the conspirators in the arson plot equally guilty of first degree murder. *State v. Morran*, 131 M 17, 306 P 2d 679.

**94-2505. (10957) Punishment for murder.****Operation and Effect**

Where there is evidence sustaining finding by trial court of murder in the first degree supreme court will not interfere with trial court's determination and the

**Guilty of Lessor Offense**

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 288.

**References**

Cited or applied in *State v. Dillon*, 125 M 24, 230 P 2d 764, 767; *State v. London*, 131 M 410, 310 P 2d 571.

Homicide: causing one, by threats or fright, to leap or fall to his death. 25 ALR 2d 1186.

sentence of death. *State v. Palen*, 120 M 434, 186 P 2d 223, 224.

**References**

Cited in *Andres v. United States*, 332 U S 499, 92 L Ed 104, 68 S Ct 169.

**94-2507. (10959) Manslaughter—voluntary and involuntary.****Subd. 2****Acts of Omission**

Omission to perform an act required by law can be the basis for manslaughter. Hence, where evidence disclosed that a child, 5 months old, died due to starvation, and that his weight at death was only 5 pounds 14 ounces which was but ten ounces over his birth weight, and that the father and mother had the means with which to care for the child, the evidence would be sufficient to support the conviction of the parents for manslaughter. *State v. Bischoff*, 131 M 152, 308 P 2d 969.

**Criminal Negligence**

In every crime there must be a joint operation of act and intent or of act and criminal negligence; hence criminal negligence is an essential element of involuntary manslaughter. *State v. Strobel*, 130 M 442, 304 P 2d 606, 617.

Insofar as the offense of involuntary manslaughter is concerned, the proof of culpability is supplied by evidence of criminal negligence. *State v. Strobel*, 130 M 442, 304 P 2d 606, 617.

It is wholly unnecessary in involuntary manslaughter cases to superimpose upon the requirement of the element of criminal negligence the further requirement that a determination must be made as to whether the act resulting in death might ordinarily be classified as malum in se or merely malum prohibitum, for, if the act is done in a manner which is criminally negligent, it thereby becomes malum in se and thereby includes the element of mens rea. *State v. Strobel*, 130 M 442, 304 P 2d 606, 617.

Irrespective of the character of the unlawful act, whether malum in se or merely malum prohibitum, the criminality of the act resulting in death is established if that act was done negligently in such a manner as to evince a disregard for human life or an indifference to consequences. *State v. Strobel*, 130 M 442, 304 P 2d 606, 617.

Neither ordinary negligence nor the violation of traffic regulations unaccompanied by criminal negligence will suffice to establish the essential element of mens rea. *State v. Strobel*, 130 M 442, 304 P 2d 606, 619.

**Instructions**

Where judge instructed the jury in the language of the statute thereby giving the jury the definitions of both voluntary and involuntary manslaughter, defendant could not complain on ground there was no evidence of voluntary manslaughter in the case where the jury found him guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 289.

Where defendant was charged with second degree murder but the court withdrew the murder charge from the jury and presented the question of the guilt or innocence of the defendant for the crime of manslaughter, an instruction charging the jury that the state must prove the "intent" alleged in the information could properly have been modified to apply to the crime of manslaughter, however, conviction will not be set aside where it appears that no prejudice resulted. *State v. Allison*, 122 M 120, 199 P 2d 279, 291.



Where evidence showed that defendant was drunk and that he drove his automobile at a high rate of speed into the rear of another automobile going the same direction, causing it to catch fire and killing the occupants, the contention of defendant that he could not remember the events which transpired at that time did not establish an accident and instruction on responsibility for deaths caused by accident was not necessary. *State v. Souhrada*, 122 M 377, 204 P 2d 792, 796.

In prosecution for involuntary manslaughter the issue is one of criminal negligence rather than intent and giving of instruction that "intent is not an element of involuntary manslaughter" was not erroneous. *State v. Souhrada*, 122 M 377, 204 P 2d 792, 797.

Since the word "feloniously" is not necessary in the information it was not necessary that the word "feloniously" be defined by the court's instructions and court's erroneous definition could not have been prejudicial particularly where other instructions clearly advised the jury of the elements of the crime. *State v. Souhrada*, 122 M 377, 204 P 2d 792, 797.

Where the court instructed the jury that in order to find the defendant guilty it must find that the defendant committed an unlawful act, not amounting to a felony, and that the unlawful act was the proximate cause of the injury and death; and then in a later instruction defined criminal negligence as such that amounts to a wanton, flagrant, or reckless disregard of consequences or wilful indifference of the safety or rights of others, the instructions taken as a whole are correct. For while the former may, standing alone, be inaccurate or even erroneous, yet as qualified and explained by other portions of the charge, in *pari materia*, it fully and fairly submits the case to the jury. *State v. Bosch*, 125 M 566, 242 P 2d 477, 480.

#### Intent

A wilful or evil intent is not a requirement of involuntary manslaughter. *State v. Pankow*, — M —, 333 P 2d 1017, 1021.

#### Operation and Effect

This section is a recognition of the frailty of human nature, and has as its

purpose to reduce a homicide committed under the circumstances therein contemplated to the grade of manslaughter. *State v. Messerly*, 126 M 62, 244 P 2d 1054, 1056.

#### Photographs in Evidence

In a prosecution of defendant for failure to provide food to an infant child which resulted in the child's death, it was error to admit into evidence photographs of the body of the child which showed ghastly and gruesome looking sores or scars alleged to have been caused by dermatitis. The charge was for failure to provide food and not for the failure to provide medical care and such photographs in no way went to the proof of starvation. Their purpose could only arouse the human feelings of the jury without aiding them in further understanding the crime charged. *State v. Bischert*, 131 M 152, 308 P 2d 969, 973.

#### Sufficiency of Evidence

Where defendant had invited another person to stay or "bunk" with him for the night, and thereafter, while in his tavern, shot through the screen and door of his bedroom striking such person who was on the other side of the door, jury was justified in returning a verdict of guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 289.

Defendant who deliberately drove his car around curve at a speed which he must have known was dangerous to human lives, those of himself and his passengers was properly convicted of involuntary manslaughter. *State v. Pankow*, — M —, 333 P 2d 1017, 1019.

#### Sufficiency of Information

Information for manslaughter against driver of death car was sufficient where it was in the form prescribed by section 94-6404, complied with the requirements of sections 94-6403, 94-6405, and met the tests provided by section 94-6412. *State v. Haley*, 132 M 366, 318 P 2d 1084, 1085.

#### Verdict of Manslaughter on Charge of Murder

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 288.

### 94-2510. (10962) Proof of corpus delicti.

#### References

Cited or applied in *State v. Storm*, 127

M 414, 265 P 2d 971, 974 (concurring opinion).

### 94-2511. (10963) Excusable homicide.

#### Instructions

Refusal to give instruction under this section was not reversible error in view of other instructions given. *State v. Allison*, 122 M 120, 199 P 2d 279, 289.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

**94-2512. (10964) Justifiable homicide by public officers.**

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

**94-2513. (10965) Justifiable homicide by other persons.**

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

## CHAPTER 26—KIDNAPING

**94-2601. (10970.1) Kidnaping—penalty—place of trial.**

Seizure or detention for purpose of committing rape, robbery, or similar offense as constituting separate crime of kidnaping. 17 ALR 2d 1003.

## CHAPTER 27—LARCENY AND FALSIFICATION OF PUBLIC RECORDS AND JURY LISTS

Section 94-2702. Uttering fraudulent checks or drafts—evidence.

**94-2701. (11368) Larceny defined.****Civil Liability**

In action based upon indemnity bond issued by defendant to indemnify plaintiff against loss from fraud or dishonesty of its station agent, allegation in complaint that the agent while in possession of money and property belonging to plaintiff, had wrongfully and dishonestly appropriated plaintiff's products and cash money, sufficiently stated a cause of action on which to predicate civil liability. *Waite v. Standard Accident Ins. Co.*, 132 M 220, 315 P 2d 989, 992.

**Instructions**

Conviction under this section requires proof of specific intent and an instruction that "when an unlawful act is shown to

have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent. The law also presumes that a person intends the ordinary consequences of any voluntary act committed by him" was erroneous. *State v. Garney*, 122 M 491, 207 P 2d 506.

**Larceny by Indians on Indian Territory**

A state district court was without jurisdiction to convict an Indian of larceny which occurred on Indian territory since under Acts of Congress (U. S. C. Tit. 18, §§ 1153, 3242) such an offense is within the exclusive jurisdiction of the United States. *State v. Pepion*, 125 M 13, 230 P 2d 961.

**94-2702. (11369) Uttering fraudulent checks or drafts—evidence.**

Any person who for himself or as the agent or representative of another or as an officer of a corporation, wilfully, with intent to defraud shall make or draw or utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money upon any bank or depository, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has no funds or insufficient funds in or credit with such bank or depository, or person, or firm, or corporation, for the payment of such check, draft, or order in full upon its presentation, although no express representation is made with the reference thereto, shall upon conviction be punished as follows: If there are no funds in or credit with such bank or depository, or person, or firm, or corporation, for the payment of any part of such check, draft or order, upon presentation, then in that case the person convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars

(\$5,000.00) or by both such fine and imprisonment; if such check, draft or order be for a sum of twenty-five dollars (\$25.00) or less, and there are some but not sufficient funds in or credit with such bank, or depository, or person, or firm, or corporation, for the payment of such check, draft or order in full, then in that case the person so convicted shall be punished by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding three hundred dollars (\$300.00) or by both such fine and imprisonment; if such check, draft or order be for a sum greater than twenty-five dollars (\$25.00) and there are some but not sufficient funds in or credit with such bank, or depository, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, then in that case the person so convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars (\$5,000.00) or by both such fine and imprisonment. As against the maker or drawer thereof, the making, drawing, uttering or delivering of such check, draft or order as aforesaid shall be prima facie evidence of intent to defraud and of knowledge of no funds or insufficient funds, as the case may be, in or credit with such bank, or depository, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, within five (5) days after receiving notice that such check, draft, or order has not been paid by the drawee. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank, depository, person, firm or corporation, for the payment of such check, draft or order.

**History:** En. Sec. 881, Pen. C. 1895; re-en. Sec. 8643, Rev. C. 1907; amd. Sec. 1, Ch. 63, L. 1919; re-en. Sec. 11369, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1957. Cal., Pen. C. Sec. 476a.

#### **Amendment**

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

#### **Repealing Clause**

Section 2 of Ch. 135, Laws 1957, repealed all acts and parts of acts in conflict therewith.

#### **Operation and Effect**

Held, that where a person was convicted under this section, the proper procedure for review of errors was by appeal under

the statutes and not by seeking at a later date the common-law writ of coram nobis. Were it shown that the defendant's case was exigent, as for example, that although innocent of any crime he was nevertheless arbitrarily sentenced and wrongfully imprisoned under that sentence, and if then the existing remedies by appeal as prescribed by our statutes and as well the usual writs to which this court customarily turns to prevent an injustice were found in truth inadequate, the court would not hesitate to design a further remedial writ so that the court could meet the emergency and attain the ends of justice, otherwise denied. *State v. Zumwalt*, 129 M 529, 291 P 2d 257, 260. (Dissenting opinion, 129 M 529, 291 P 2d 257, 262 based on the opinion that the defendant was innocent of the crime charged and arbitrarily sentenced.)

### **94-2704. (11371) Grand larceny defined.**

#### **Aiding and Abetting**

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show defendant's guilt that he aided or abetted in the commission of the crime under section 94-6423 because all persons concerned in the commission of a crime are principals under

section 94-204. *State v. Maciel*, 130 M 569, 305 P 2d 335, 336.

#### **Effect of Ownership Not Proven as Alleged**

Where the information alleges the ownership of the property, such allegation must be proven; proof of a brand only



is not sufficient proof of the ownership of an animal bearing such brand. *State v. Elmore*, 126 M 232, 247 P 2d 488, 492.

#### Operation and Effect

Conviction for larceny cannot be sustained where the evidence connecting the defendant with the hide and asportation of a live steer amounts to no more than

suspicion and conjecture. *State v. Elmore*, 126 M 232, 247 P 2d 488, 492.

It is grand larceny to take money from the person of another with a felonious intent no matter what the amount is that is taken. *State v. Peschon*, 131 M 330, 310 P 2d 591, 595.

### 94-2721. (11388) Receiver of stolen property.

#### Essential Elements of Crime

Proof that the defendant knew the property was stolen is an essential element of the crime. The evidence is not sufficient where the state relies on a bill of sale which describes "3 cow hides red no brand" and in fact the hides had brands and cattle was missing from the brand owners, while the defendant proves that when he received the hides they were bundled up and so stiffly frozen that they could not be examined to see if they had brands. *State v. Gilbert*, 126 M 171, 246 P 2d 814, 815.

#### Operation and Effect

Conviction for receiving stolen goods

cannot be sustained where the information charged that the defendant received a deepfreeze knowing the same to have been stolen from the true owner, Missoula County, while the facts were that the defendant was the county surveyor and he ordered a deepfreeze from a company and charged it to the county. Since the acts of the surveyor were unlawful, the county never purchased the freezer and never had it in its possession and at no time had title to the deepfreeze; therefore, Missoula County was never the owner from whom it was stolen as charged in the information. *State v. Bourdeau*, 126 M 266, 246 P 2d 1037, 1038.

## CHAPTER 28—LIBEL

Section 94-2807. Publishing a true report of public proceedings privileged.

**94-2807. (10995) Publishing a true report of public proceedings privileged.** No reporter, editor, or proprietor of any newspaper, nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, nor any agent or employee of any such owner, licensee, or operator, is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which is not implied from the mere fact of publication or broadcast.

**History:** En. Sec. 436, Pen. C. 1895; re-en. Sec. 8331, Rev. C. 1907; re-en. Sec. 10995, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1951. Cal. Pen. C. Sec. 254.

#### Amendment

The 1951 amendment inserted the words "nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, not any agent or employee of any such owner, licensee, or operator," and "or broadcast."

#### Repealing Clause

Section 2 of Ch. 13, L. 1951 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 13, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

## CHAPTER 30—LOTTERIES

### 94-3001. (11149) Lottery defined.

#### Numbers Games

A numbers game, whether called Chinese lottery, "The Crown Game," "The Crown

punchboard game" or any other game is a lottery. *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

### Punch Boards

Punch boards constitute a lottery. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141.

In an action for violation of this section it was no defense that the defendant had offered to pay for the operation of such punch boards in accordance with section 84-5703 et seq. which purports to license trade stimulators such as punch boards since it is not competent for the legislature to authorize lotteries in view of Const. Art. 19, sec. 2 and the case of State ex rel. Harrison v. Deniff. State v. Tursich, 127 M 504, 267 P 2d 641, 642.

### Slot Machines

The operation of a slot machine is a lottery and banned by the criminal laws of this state. State v. Marek, 124 M 178, 220 P 2d 1017, 1019; State v. Read, 124 M 184, 220 P 2d 1020; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

### References

Cited in State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

## 94-3003. (11150) Punishment for drawing lottery.

### Cross-Reference

See note to sec. 94-3001. State v. Marek, 124 M 178, 220 P 2d 1017, 1019.

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

## 94-3011. (11158) Punishment.

### Cross-Reference

See note to sec. 94-3001. State v. Marek, 124 M 178, 220 P 2d 1017, 1019.

## CHAPTER 33—MALICIOUS MISCHIEF GENERALLY

Section 94-3334. Injury to trees on public lands.

## 94-3305. (11478) Use of automobiles without consent of owners, etc.

### References

Cited or applied in the dissenting opin-

ion in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1061.

**94-3334. (11507) Injury to trees on public lands.** Every person who commits a trespass on or any injury to any state lands or the improvements thereon, or who, without the proper authority, cuts, fells, girdles, injures or destroys any trees or timber upon any of the school, university or other state lands, or removes or attempts to remove the same, or knowingly purchases or receives such trees or timber, or advises the removal thereof, is guilty of a misdemeanor, and is also liable to the state for three (3) times the value of said trees or timber, or lumber into which the same are converted.

All fines collected and all moneys recovered by virtue of this section must be paid into the trust fund if the lands involved are held in trust either through deed or grant or be paid to the funds of the state departments administrating such lands where lands not held in trust are involved.

**History:** Ap. p. Sec. 1, p. 256, L. 1891; en. Sec. 1076, Pen. C. 1895; re-en. Sec. 8773, Rev. C. 1907; re-en. Sec. 11507, R. C. M. 1921; amd. Sec. 1, Ch. 221, L. 1955.

### Amendment

The 1955 amendment substituted that part of the second paragraph beginning with the words "trust fund \* \* \*" for "school fund of the state."

## CHAPTER 35—MISCELLANEOUS OFFENSES

Section 94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years.

94-35-106.1. Jurisdiction of offenses.

94-35-106.2. Possession of beer or liquor by minor—misdemeanor.

- 94-35-123. Unlawful to dispense mescal button.  
94-35-152.1. Sale of prison-made goods on the open market prohibited.  
94-35-152.2. Contracts forbidden.  
94-35-152.3. Exchange of goods within the state.  
94-35-152.4. Regulation by board.  
94-35-152.5. Pricing by board.  
94-35-152.6. Advisory council—organization and duties.  
94-35-152.7. Purchase mandatory.  
94-35-152.8. Exceptions from mandatory provisions.  
94-35-152.9. Intentional violation.  
94-35-152.10. Authority to print and distribute catalogues.  
94-35-152.11. Penalties.  
94-35-152.12. "Open market" defined.  
94-35-152.13. Revolving fund.  
94-35-152.14. Interstate sale or exchange between penal institutions prohibited.  
94-35-152.15. Manufacture of license plates by penal institutions not prohibited—sale of surplus raised exclusively for inmates not prohibited.  
94-35-152.16. Repair and maintenance of property of penal and custodial institutions by inmates not prohibited.  
94-35-152.17. Board to provide for repair and maintenance work.  
94-35-152.18. Institutions subject to act.  
94-35-258. Endurance races of horses prohibited.  
94-35-259. Penalty for running endurance horse race.  
94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty.  
94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number.  
94-35-262. Altering, defacing or removing serial number on farm machinery.  
94-35-263. Penalty.  
94-35-264. Furnishing certain articles to prisoners in state prison—receiving such articles by prisoners—felony.  
94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty.  
94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.  
94-35-270. Delivery of grain containing toxic chemicals to public warehouses.  
94-35-271. Penalty for violation.  
94-35-271.1. Coloration of wheat, oats, rye or barley treated with injurious or toxic substances.  
94-35-271.2. Sale or offering for sale product in violation of act prohibited.  
94-35-271.3. Violation constitutes misdemeanor.  
94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty.  
94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors.

**94-3506. (10921) Arrests, seizure or levy upon property, etc.**

False imprisonment: liability of private citizen for false arrest by officer.  
21 ALR 2d 643.

**94-3513. (11296) Repealed.**

<b>Repeal</b>	was repealed by Sec. 4, Ch. 171, Laws
This section (Sec. 752, Pen. C. 1895),	1953.
relating to boxing and wrestling matches,	

**94-3525. (11302) Carrying certain concealed weapons in cities, etc.**

Forfeiture of weapon unlawfully carried,  
before trial of individual offender. 3 ALR  
2d 752.



**94-3527. (11304) Same—who excepted from act.****References**

Cited or applied in *State v. Nickerson*, 126 M 157, 247 P 2d 188, 192.

**94-3540. (10944) Criminal contempt.**

Contempt for disobedience of orders in criminal matters where beyond court's jurisdiction. 12 ALR 2d 1059.

Right of witness to refuse to answer, on the ground of self-incrimination, as

to membership in or connection with party, society, or similar organization or group. 19 ALR 2d 388.

**94-3573. (11567) Repealed.****Repeal**

This section (Sec. 1, Ch. 66, L. 1907), relating to the showing of motion pictures

depicting crimes, was repealed by Sec. 1, Ch. 52, Laws 1959, effective February 26, 1959.

**94-35-102, 94-35-103. (11314, 11259) Repealed.****Repeal**

These sections (Sec. 1, Ch. 84, Laws 1903 and Sec. 696, Pen. C. 1895), relating

to the prohibition against Indians carrying firearms while off the reservation, were repealed by Sec. 1, Ch. 12, Laws 1953.

**94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years.** Any person who shall sell, give away or dispose of intoxicating liquor to any persons under the age of twenty-one (21) years, shall for the first offense be subject to punishment not exceeding five hundred dollars (\$500.00) fine or by imprisonment not to exceed six (6) months in the county jail, or both such fine and imprisonment, and upon conviction for the second and subsequent offenses he shall be subject to punishment by fine of not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000.00) or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. Nothing herein contained shall prevent the furnishing of intoxicating liquor to a person under twenty-one (21) years of age upon any physician's prescription where authorized by the laws of this state or the United States, nor the furnishing of wine for sacramental purposes.

**History:** En. Sec. 1, Ch. 143, L. 1949.

**Compiler's Note**

The section appearing in the parent volume (Sec. 1, Ch. 122, Laws 1927 as amended Sec. 1, Ch. 124, Laws 1941 and appearing in Revised Codes 1935 as Sec. 11048.1) was held to have been impliedly repealed by Ch. 105, Laws 1933 in *State v. Holt*, 121 M 459, 194 P 2d 651, and was specifically repealed by Sec. 3, Ch. 143, Laws 1949, and therefore the law set out above (Sec. 1, Ch. 143, Laws 1949) covering the same subject-matter has been given the same section number.

**Title of Act**

An act preventing the selling or giving away of intoxicating liquor to persons under twenty-one (21) years of age; providing penalties therefor; and repealing Section 11048.1 as amended by Chapter

124 of the Laws of the Twenty-seventh Legislative Assembly of the State of Montana, 1941, and all other acts and parts of acts in conflict herewith.

**Alcoholic Content of Beer**

It is not necessary that the information or the evidence show the alcoholic content of the beer in order to obtain a conviction. *State v. Winter*, 129 M 207, 285 P 2d 149, 156.

**Construction**

Under the above statute the selling to a minor is an offense without regard to whether the defendant had a license to sell or not. *State v. Winter*, 129 M 207, 285 P 2d 149, 155.

**Entrapment**

Defense of entrapment would not be available to a bar owner in a prosecution

for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. *State v. Parr*, 129 M 175, 283 P 2d 1086. (Dissenting opinion, 129 M 175, 283 P 2d 1086, 1090.)

#### Operation and Effect

Misrepresentation of age by a minor is not a defense and a seller of intoxicating beverages must know the age of the purchaser and whatever false representations are made or precautions taken are immaterial where, in fact, the purchaser is under the age of twenty-one. *State v. Paskvan*, 131 M 316, 309 P 1019, 1021.

The purchaser under the age of twenty-one is not an accomplice to the seller. The purchaser has committed a crime too,

**94-35-106.1. Jurisdiction of offenses.** In cases of prosecution for first offenses under this act, the justice courts and district courts of the state of Montana shall have concurrent original jurisdiction. In all other cases the district courts of the state of Montana shall have exclusive original jurisdiction for violation of the provisions of this act.

**History:** En. Sec. 2, Ch. 143, L. 1949.

#### Repealing Clause

Section 3 of Ch. 143, Laws 1949 repealed section 11048.1, Revised Codes 1935, as amended by chapter 124, Laws 1941 and all other acts or parts of acts in conflict therewith.

#### Validity

This section was not repealed by implication by the amendment of section 4-413 by Ch. 71, Laws 1953. *State v. Wild*, 130 M 476, 305 P 2d 325, 328.

Any amendment of this section by Ch. 71, Laws 1953 (4-413) is governed by the

but his is knowingly misrepresenting his qualifications for the purpose of obtaining liquor under section 4-413 the penalty for which is found in section 4-439. *State v. Paskvan*, 131 M 316, 309 P 2d 1019, 1020.

#### Validity

This section was not impliedly repealed by section 4-330 as amended by chapter 166, Laws of 1951. *State v. Winter*, 129 M 207, 285 P 2d 149, 156.

#### References

Cited or applied in *State v. Wild*, 130 M 476, 305 P 2d 325, 327.

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

provisions of section 43-510 which provides that "where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted but the portions which are not altered are to be considered as having been the law from the time when they were enacted." *State v. Wild*, 130 M 476, 305 P 2d 325, 328.

There is nothing in Ch. 71, Laws 1953 (4-413) which conflicts with the provisions of this section. *State v. Wild*, 130 M 476, 305 P 2d 325, 328.

#### References

Cited or applied in *State v. Winter*, 129 M 207, 285 P 2d 149, 155.

**94-35-106.2. Possession of beer or liquor by minor—misdemeanor.** Any person who shall not have reached the age of twenty-one (21) years and who shall have in his or her possession beer or liquor, shall be guilty of a misdemeanor.

**History:** En. Sec. 1, Ch. 125, L. 1957.

#### Title of Act

An act prohibiting the possession of beer

and liquor by persons under the age of twenty-one (21) years; providing a penalty.

**94-35-107. (11048.2) "Intoxicating liquor" defined.**

#### Vodka

While this section does not use the word vodka it does make any beverage containing more than one-half of one per cent of alcohol an intoxicating liquor and the

court may take judicial notice of the commonly accepted and generally understood definition of the word "vodka" under section 93-501-1. *State v. Wild*, 130 M 476, 305 P 2d 325, 334.

**94-35-122. (10948) Maliciously procuring warrant.**

#### References

Cited in *Wolf v. Colorado*, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

**94-35-123.** (3202.1) **Unlawful to dispense mescal button.** That it shall be unlawful for any person, firm, corporation or association to sell, furnish, or give away, or offer to sell, furnish, or give away, or have in his or its possession Peyote (Pellote), botanically known as *Lophophora Williamsii*; or *Agava Americana*, commonly known as the Mescal Button; or any compound, derivative, or preparation thereon; provided that the terms of this act shall not apply to transporting, possession or using said Peyote for religious sacramental purposes by any bona fide religious organization incorporated under the laws of the state of Montana.

**History:** En. Sec. 1, Ch. 22, L. 1923;  
amd. Sec. 1, Ch. 53, L. 1957.

**Repealing Clause**

Section 2 of Ch. 53, Laws 1957 repealed all acts or parts of acts in conflict therewith.

**Amendment**

The 1957 amendment added the proviso clause.

**94-35-143.** (10952) **Oppression and injury by an officer.**

**References**

Cited in *Wolf v. Colorado*, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

**94-35-152.1. Sale of prison-made goods on the open market prohibited.** The sale on the open market of this state of all goods, wares, or merchandise, manufactured or mined, wholly or in part, by any penal or reformatory institutions is hereby prohibited. On and after the effective date of this act, the provisions of this act and all other regulations and laws of this state in effect at that time, and not inconsistent with this act will apply to all goods, wares, or merchandise, manufactured or mined, wholly or in part, by convicts or prisoners (except prisoners on parole or probation), and in any penal or reformatory institutions, and transported into the state of Montana for use or distribution to the same extent and in the same manner as if such goods and merchandise were so manufactured, produced, or mined within the state of Montana. Provided, that nothing contained herein, shall be construed to prevent the sale of agriculture [agricultural] and horticultural products through the usual channels of trade.

**History:** En. Sec. 1, Ch. 162, L. 1953.

**Compiler's Note**

The bracketed word "agricultural" was inserted by the compiler to indicate an apparent error.

**Title of Act**

An act to provide for regulating the production and disposition of prison-made goods; requiring the penal and custodial institutions of the state to purchase such goods except in certain instances; provid-

ing that repair and maintenance work may be done in the custodial and penal institutions of the state; creating an advisory council; providing for the organization, duties and purpose of said council; providing penalties for the violation of this act and repealing sections 94-35-153 to 94-35-162, inclusive, of the Revised Codes of Montana, 1947.

---

**Convicts** 13.

18 C.J.S. Convicts § 26.

**94-35-152.2. Contracts forbidden.** It is hereby declared unlawful for the state of Montana or any of its officers or agents; or any of the political subdivisions thereof, to enter into any contract or any arrangement for the labor of any of the inmates of any of the penal or reformatory institutions of this state.

**History:** En. Sec. 2, Ch. 162, L. 1953.

**Convicts** 10(1).

18 C.J.S. Convicts § 16.



**94-35-152.3. Exchange of goods within the state.** For the purpose of this act, the provisions of section 1 [94-35-152.1], relating to the sale on the open market, shall not include the sale or exchange of convict-made goods produced in the penal or reformative institutions, to or with any penal, charitable, reformatory or custodial institutions, the major portion of whose maintenance is contributed by this state for the use and/or consumption of said institution, or for the use or consumption of the inmate of said institution.

**History:** En. Sec. 3, Ch. 162, L. 1953.

**94-35-152.4. Regulation by board.** The board of state prison commissioners is hereby authorized and directed to make such rules and regulations, governing the conducted industries in the penal or reformative institutions of this state, as will (a) Result in the manufacture, mining, or production of only such goods, wares or merchandise as may be used or needed in the several penal, custodial, charitable or reformatory institutions, the major portion of whose maintenance is contributed by this state, (b) Result in the manufacture at such penal or reformative institutions of as wide a variety of products as practicable, it being the purpose and intent of this provision to direct the management of said institutions, to so diversify the products of said institution as to eliminate the concentration of prison labor in any one or few industries, and (c) Accomplish to the greatest degree the rehabilitation of the inmates.

**History:** En. Sec. 4, Ch. 162, L. 1953.

**94-35-152.5. Pricing by board.** The board of state prison commissioners is hereby authorized and directed to establish and fix the sale price for the products of the industries in the penal or reformative institutions of the state. In no case shall prices so established and fixed for such products be greater than the prices existing in the open market for products of comparable quality.

**History:** En. Sec. 5, Ch. 162, L. 1953.

**94-35-152.6. Advisory council—organization and duties.** There is hereby created an advisory council for the purpose of studying existing methods of manufacture and distribution of prison-made goods with the view to improvements which will accomplish the ends and purposes set forth in section 3 [94-35-152.3] of this act. Said council shall consist of five (5) members to be appointed by the governor. One (1) of the members shall be a representative of labor, one (1) of industry, one (1) of agriculture, one (1) of consumer goods distribution and the state director of vocational education. The council shall organize within thirty (30) days after their appointment by the election of a chairman and secretary and such other officers as they may deem necessary. Their duties shall be to examine into all matters relating to the manufacture and distribution of prison-made goods, to consult with and advise the warden of the state prison in regard to existing prison industries, the management thereof and the advisability of establishing additional industries with the view to accomplishment of the results set forth in section 3 [94-35-152.3] of this act. From time to time, if they shall deem it advisable to do so, they shall render reports and make recommendations

to the board of state prison commissioners. They shall prepare a full report of their investigations, findings and recommendations. They shall be paid their actual and necessary expenses in connection with these duties.

**History:** En. Sec. 6, Ch. 162, L. 1953.

**94-35-152.7. Purchase mandatory.** On and after the effective date of this act, the penal and custodial institutions of this state shall purchase from the board of state prison commissioners all articles, if available, required by such penal or custodial institutions of the state, produced or manufactured by the said board in the penal or reformative institutions of the state and no such article shall be purchased by any penal or custodial institution of the state from any other source unless excepted from the provisions of this section, as hereinafter provided.

**History:** En. Sec. 7, Ch. 162, L. 1953.

**94-35-152.8. Exceptions from mandatory provisions.** Exceptions from the operation of the mandatory provisions of this section may be made in any case where, in the opinion of the board of state prison commissioners, articles so produced or manufactured do not meet the reasonable requirements of such penal or custodial institution of the state, or in any case where the requisition made cannot be complied with on account of an insufficient supply of articles or supplies required. No such penal or custodial institution shall be allowed to evade the intent and meaning of this section by slight variations from standards adopted by the board of state prison commissioners when the articles produced or manufactured by it, in accordance with its standards, are reasonably adapted to the actual needs of such penal or custodial institution.

**History:** En. Sec. 8, Ch. 162, L. 1953.

**94-35-152.9. Intentional violation.** No voucher, certificate or warrant issued by the state, or penal or custodial institution, shall be questioned on the grounds that this section has not been complied with, but if intentional violation of this section by any penal or custodial institution continues after notice from the governor to desist, the same shall constitute a malfeasance in office and shall subject the officers responsible for this violation to suspension or removal from office, as may be provided by law in other cases of malfeasance.

**History:** En. Sec. 9, Ch. 162, L. 1953.

**94-35-152.10. Authority to print and distribute catalogues.** The board of state prison commissioners may cause to be prepared annually, at such times as it may determine, catalogues and circulars containing the description of all articles and supplies manufactured and produced by it, pursuant to the provisions of this act, copies of which catalogue or circular shall be sent by it to all penal and custodial institutions of the state.

**History:** En. Sec. 10, Ch. 162, L. 1953.

**94-35-152.11. Penalties.** Whoever sells or exposes for sale or exchange any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners (except prisoners on parole or probation), in any penal or reformatory institutions, except in the methods established by this act, shall, upon conviction, be subject to a fine of three hundred

dollars (\$300.00) or imprisonment for ninety (90) days, or both, and each such sale or offer for sale or exchange shall be considered a separate offense; provided that this act shall have no application to articles and things made by an inmate for his own individual profit.

History: En. Sec. 11, Ch. 162, L. 1953.

**94-35-152.12. "Open market" defined.** The words "open market," as used in this act, shall mean all sales or exchange conducted or transacted through the medium of stores, shops, sales agents or agencies, whether retail or wholesale, or in any manner to the consuming public.

History: En. Sec. 12, Ch. 162, L. 1953.

**94-35-152.13. Revolving fund.** All receipts from the sale of the products produced or manufactured by the industries in the penal or reformatory institutions of the state shall be deposited in the state treasury to the credit of a special fund to be designated "industrial revolving fund." Said fund shall be available for capital outlay for industrial purposes or maintenance, operation and recurrent expenses of the industries above described. At the beginning of each fiscal year the maximum amount of such revolving fund shall not exceed an amount equivalent to fifty per cent (50%) of the total sales from all industries for the preceding fiscal year and any excess shall be transferred to the state general fund.

History: En. Sec. 13, Ch. 162, L. 1953.

**94-35-152.14. Interstate sale or exchange between penal institutions prohibited.** The exchange of the products of penal or reformatory institutions of this state, as specified in this act, for the products of any other state is hereby prohibited.

History: En. Sec. 14, Ch. 162, L. 1953.

**94-35-152.15. Manufacture of license plates by penal institutions not prohibited—sale of surplus raised exclusively for inmates not prohibited.** Nothing contained herein shall be deemed to prevent any of the said institutions from manufacturing motor vehicle number plates, and other articles required or needed by the office of the registrar of motor vehicles, or metal highway marking signs required by the state highway department, or from preventing any of said institutions selling or disposing of any reasonable surplus of produce raised exclusively for the use, feeding or maintenance of the inmates of any of said institutions.

History: En. Sec. 15, Ch. 162, L. 1953.

**94-35-152.16. Repair and maintenance of property of penal and custodial institutions by inmates not prohibited.** Nothing contained herein shall be deemed to prevent the repair and maintenance of all property and equipment of all custodial and penal institutions by the inmates of those institutions, nor shall it be deemed to prevent the repair and maintenance in any of the penal or custodial institutions of the state of furniture and equipment of any other institution of the state.

History: En. Sec. 16, Ch. 162, L. 1953.

**94-35-152.17. Board to provide for repair and maintenance work.** The board of state prison commissioners is hereby authorized and directed to



make rules and regulations for the purpose of establishing facilities and programs in the penal and reformative institutions of the state which will enable the said institutions to carry out as much of the repair and maintenance work as the nature of the penal and reformative institutions will permit.

**History:** En. Sec. 17, Ch. 162, L. 1953.

**94-35-152.18. Institutions subject to act.** "Penal and custodial institutions of the state" as used in this act shall mean the following: the state penitentiary at Deer Lodge; the state tuberculosis sanitarium at Galen; Montana state hospital at Warm Springs; the soldiers' home at Columbia Falls; the state orphans' home at Twin Bridges; the Montana state training school at Boulder; the Montana state school for the deaf and blind at Great Falls; the Montana state industrial school at Miles City; the state vocational school for girls at Helena, and the state home for the aged at Lewistown.

**History:** En. Sec. 18, Ch. 162, L. 1953.

#### Repealing Clause

Section 19 of Ch. 162, Laws 1953 specifically repealed secs. 94-35-153 to 94-35-162.

#### Effective Date

Section 20 of Ch. 162, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

### **94-35-153 to 94-35-162. (11573 to 11573.9) Repealed.**

#### Repeal

These sections (Sec. 2, Ch. 32, Laws 1911; Secs. 1 to 9, Ch. 172, Laws 1933; amd. Sec. 1, Ch. 9, Ex. L. 1933), relating

to prison-made goods, were repealed by Sec. 19, Ch. 162, Laws 1953 effective March 3, 1953. For present law, see secs. 94-35-152.1 to 94-35-152.18.

### **94-35-167. (11231) Public nuisances defined.**

#### References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

### **94-35-169. (10928) Public officers—resisting in the discharge, etc.**

#### Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest

could not be justified as for violation of this section since plaintiff had right to possession of the check. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

### **94-35-216. (11039) Sunday—certain activities on, forbidden.**

Construction of statute or ordinance prohibiting or regulating sports and games on Sunday. 24 ALR 2d 813.

**94-35-258. Endurance races of horses prohibited.** It shall be unlawful for any person, firm, corporation, association or organization within the state of Montana to sponsor, promote, conduct, or participate in sponsoring, promoting or conducting any horse race, commonly known as an endurance race, for a distance of more than two (2) miles.

**History:** En. Sec. 1, Ch. 27, L. 1949.

more than two miles; providing a penalty; and repealing all acts in conflict.

#### Title of Act

An act prohibiting endurance races of

Animals<sup>Ⓢ</sup>40.

3 C.J.S. Animals § 70.

**94-35-259. Penalty for running endurance horse race.** Any person, firm, corporation, association, or organization violating any of the provisions of

this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) or more than five hundred dollars (\$500.00) or by imprisonment in the county jail of not less than ninety [90] days or more than one [1] year.

**History:** En. Sec. 2, Ch. 27, L. 1949

all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 3 of Ch. 27, Laws 1949 repealed

Animals 41.

3 C.J.S. Animals § 75.

**94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty.** (a) Every person required by law to affix any tax stamp or insignia of the state of Montana, to or upon any article to evidence the payment of a tax or license thereon, who shall fail, neglect or refuse to affix such stamp or insignia thereto, or to affix it in the proper place, or to cancel it, in the manner and as required by law, or as required by rules and regulations of the state board of equalization of this state when charged with administering any act relating thereto, or who shall wilfully remove any such affixed stamp or insignia from any such article and affix it to another such article required by law to be so stamped or marked, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not less than thirty (30) days, nor more than six (6) months, or by a fine of not less than one hundred dollars (\$100.00), nor more than three hundred dollars (\$300.00), or by both such fine and imprisonment.

(b) Every person without authority of law, who shall wilfully make, print, manufacture, counterfeit, or attempt to make, print, manufacture or counterfeit any such stamp or insignia of the state of Montana or of any other state, or who shall, without authority of law, have in his possession any such counterfeit stamp or insignia, die, equipment or material for the making, printing, manufacturing or counterfeiting of any such stamp or insignia, or who shall be concerned therewith, is guilty of a felony and shall be punished by imprisonment in the state prison not less than one (1) year, nor more than five (5) years, or by a fine of not less than one thousand dollars (\$1,000.00), nor more than five thousand dollars (\$5,000.00), or by both such fine and imprisonment.

**History:** En. Sec. 1, Ch. 43, L. 1949.

**Title of Act**

An act relating to tax stamps or insignia of the state of Montana; providing penalty for counterfeiting any such stamp or insignia, or having possession thereof, or being concerned therewith; prescribing penalty for re-using any such stamp or insignia, and for failure or refusal to properly affix any such stamp or insignia, or to properly cancel any such stamp.

**Repealing Clause**

Section 2 of Ch. 43, Laws 1949 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 43, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 23, 1949.

Counterfeiting 6; Licenses 40.

20 C.J.S. Counterfeiting § 9; 53 C.J.S. Licenses § 66.

**94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number.** No person, firm or corporation shall import, or cause to be imported into the state of Montana any tractor, forage blower,

combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; nor transport, sell, offer for sale or otherwise dispose of any such farm implements or machinery within the state of Montana knowing the same to have been imported in violation of this act.

**History:** En. Sec. 1, Ch. 167, L. 1953.

**Title of Act**

An act prohibiting the importation into Montana of farm implements or machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; prohibiting the destruction, removal, alteration, covering or defacing

of the serial numbers on farm implements or machinery; prohibiting the transportation or offering for sale, selling or otherwise disposing of farm implements or machinery knowing the same to have been imported into Montana in violation of this act and providing penalties for the violating hereof.

**94-35-262. Altering, defacing or removing serial number on farm machinery.** No person, firm, association or corporation shall destroy, remove, alter, cover, or deface the manufacturer's serial numbers from any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery having such numbers.

**History:** En. Sec. 2, Ch. 167, L. 1953.

**94-35-263. Penalty.** Any wilful violation of any of the provisions of this act shall constitute a misdemeanor.

**History:** En. Sec. 3, Ch. 167, L. 1953.

**94-35-264. Furnishing certain articles to prisoners in state prison—receiving such articles by prisoners—felony.** Any person who, without the consent of the warden, shall furnish or attempt to furnish, or aid or assist in furnishing to any prisoner committed to the state prison, any alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half ( $\frac{1}{2}$ ) of one per centum (1%) or more of alcohol by volume which are fit for use for beverage purposes, or any knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, clothing other than that issued by the state prison, or money to such prisoner; or any prisoner who, without the consent of the warden, shall receive, attempt to receive, or aid or assist in receiving or attempting to receive any of such things, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars (\$10,000), or both.

**History:** En. Sec. 1, Ch. 177, L. 1953.

**Title of Act**

An act providing that any person who, without the consent of the warden, shall furnish or attempt to furnish, or aid or assist in furnishing to any prisoner confined in the state prison, any alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, con-

taining one-half ( $\frac{1}{2}$ ) of one per centum (1%) or more of alcohol by volume which are fit for use for beverage purposes, knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, clothing, or money to such prisoner, or any prisoner who, without the consent of the warden, shall receive, attempt to receive, or aid or assist in receiving or attempting to receive any of such things, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term



not exceeding ten (10) years, or a fine not exceeding ten thousand dollars (\$10,000), or both.

#### Repealing Clause

Section 2 of Ch. 177, Laws 1953 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 177, Laws 1953 provided the act should be in effect upon its passage and approval. Approved March 4, 1953.

Prisons 17½.

72 C.J.S. Prisons § 22.

**94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty.** Any person, firm or corporation abandoning or discarding in any place accessible to children any refrigerator, icebox or ice chest, of a capacity of one and one-half cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded refrigerator, icebox or ice chest to remain in such condition, shall be deemed negligent as a matter of law and shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars (\$50.00), or imprisoned not more than thirty (30) days, or both.

**History:** En. Sec. 1, Ch. 126, L. 1955.

#### Title of Act

An act providing penalties for abandoning or discarding refrigerators, iceboxes or ice chests with attached doors or lids in places accessible to children; providing persons knowingly permitting such con-

ditions to exist to be negligent in addition to penalties and containing a repealing clause.

#### Repealing Clause

Section 2 of Ch. 126, Laws 1955 repealed all acts and parts of acts in conflict therewith.

#### 94-35-266 to 94-35-268. Repealed.

#### Repeal

These sections (Secs. 1-3, Ch. 139, L. 1955; Sec. 1, Ch. 15, L. 1957), relating to

life saving equipment on boats, were repealed by Sec. 20, Ch. 285, Laws 1959, effective March 18, 1959.

**94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.** Any person who, in the act of pursuing, taking or killing game animals or game birds, shall act in a careless or reckless manner, or with wanton disregard of human life or property, or who knowingly fails to give all reasonable assistance to any person whom he has injured or wounded, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and upon conviction thereof, be punished as provided by law.

**History:** En. Sec. 1, Ch. 189, L. 1955.

#### Title of Act

An act providing for the prosecution of

careless, reckless and negligent hunters, and for imposing of penalties upon conviction thereof.

**94-35-270. Delivery of grain containing toxic chemicals to public warehouses.** It shall be unlawful for any person, firm, corporation or association, to deliver to any public warehouse, any grain in bulk, if such grain contains toxic chemicals, providing such person, firm, corporation or association knew, or upon the exercise of reasonable diligence, could have known of the presence of toxic chemicals in the grain.

**History:** En. Sec. 1, Ch. 9, L. 1957.

#### Title of Act

An act making it unlawful to deliver to

any public warehouse any grain in bulk containing toxic chemicals if the person, firm, corporation or association delivering such grain knew, or by the exercise of

reasonable diligence, could have known, of the presence of such toxic chemicals; providing that such delivery shall constitute

a misdemeanor and providing penalties therefor; and repealing all acts and parts of acts in conflict herewith.

**94-35-271. Penalty for violation.** Any person, firm, corporation or association violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500.00) and not less than two hundred fifty dollars (\$250.00) or be imprisoned for not more than six (6) months and not less than thirty (30) days, or both.

**History:** En. Sec. 2, Ch. 9, L. 1957.

**Repealing Clause**

Section 3 of Ch. 9, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**94-35-271.1. Coloration of wheat, oats, rye or barley treated with injurious or toxic substances.** Any wheat, oats, rye or barley treated with any injurious or toxic substance or chemical shall at the same time be colored or dyed a color contrasting with the natural color of such wheat, oats, rye or barley, so that the treated wheat, oats, rye or barley is readily identifiable as having been treated with an injurious or toxic substance or chemical.

**History:** En. Sec. 1, Ch. 80, L. 1959.

**Title of Act**

An act to provide for the coloration of wheat, oats, rye or barley when being

treated with an injurious or toxic substance or chemical, providing a penalty; and repealing all acts or parts of acts in conflict herewith.

**94-35-271.2. Sale or offering for sale product in violation of act prohibited.** No person, firm, corporation or association shall sell or offer for sale, any wheat, oats, rye or barley which has been treated with any injurious or toxic substance or chemical unless the wheat, oats, rye or barley has been colored or dyed a color contrasting with the natural color of the wheat, oats, rye or barley. This act shall not apply to the treatment of any wheat, oats, rye or barley which solely is for the killing of insects which might be present therein. Provided, however, that if such treatment uses any injurious or toxic substance for the killing of insects, then such grain must be colored or dyed as hereinabove provided if offered for sale.

**History:** En. Sec. 2, Ch. 80, L. 1959.

**94-35-271.3. Violation constitutes misdemeanor.** Any person, firm, corporation or association violating any of the provisions of this act shall be guilty of a misdemeanor.

**History:** En. Sec. 3, Ch. 80, L. 1959.

all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 4 of Ch. 80, Laws 1959 repealed

**94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty.** Every person who shall wilfully operate or use any aircraft without the consent of the owner, or who shall wilfully interfere or tamper with any aircraft without the consent of the owner, or who shall wilfully put into operation the engine of any aircraft without the consent of the owner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not more than six (6) months or

by a fine of not more than five hundred dollars (\$500.00) or by both such fine and imprisonment.

**History:** En. Sec. 1, Ch. 83, L. 1957.

**Title of Act**

An act making it a misdemeanor for any person to wilfully use or operate any aircraft, or wilfully interfere or tamper with any aircraft, or wilfully put into operation the engine of any aircraft, with-

out the consent of the owner; providing a penalty for such offense; and containing a repealing clause.

**Repealing Clause**

Section 2 of Ch. 83, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors.** Every person who carries or bears upon his person or who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him or who owns, possesses, uses, stores, gives away, sells or offers for sale, a switch blade knife shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding six (6) months or by both such fine and imprisonment; provided, that a bona fide collector, whose collection is registered with the sheriff of the county in which said collection is located, is hereby exempted from the provisions of this act. For the purpose of this section a switch blade knife is defined as any knife which has a blade one and one-half (1½) inches long or longer, which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

**History:** En. Sec. 1, Ch. 243, L. 1957.

**Title of Act**

An act making it a criminal offense [offense] for any person to own, possess, carry, sell or display a switch blade knife, defining a switch blade knife, making it a criminal offense and providing a punishment therefor; providing for the effective date of said act and repealing all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 2 of Ch. 243, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 243, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

CHAPTER 36—OBSCENITY—LITERATURE—INDECENT EXPOSURE  
—HOUSES OF ILL FAME—PROHIBITION OF CERTAIN  
ADVERTISEMENTS

Section 94-3601. Obscene literature not to be given to or sold by minors.  
94-3602. Penalty.

**94-3601. (11134) Obscene literature not to be given to or sold by minors.** (1) It is unlawful for any person to sell, lend, give away, distribute, resell, or redistribute, show, or have in his possession with intent to sell, give away, distribute, resell, or redistribute, or to show or advertise or otherwise offer for loan, gift, or distribution, to any minor child, under the age of eighteen (18) years, any book, pamphlet, magazine, newspaper, lewd picture, story paper, so-called comic book, or other printed, mimeographed or published matter, devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of lust or crime, or portraying sexually indecent conduct or subject-matter, or portraying the planning or committing of deeds of crime, violence, horror, brutality, immorality or vice. It shall be un-



lawful to exhibit upon any street or highway, or in any place within the view of any minor child under the age of eighteen (18) years, or to hire, use, employ, or permit such child to sell or give away or in any manner distribute any such book, pamphlet, magazine, lewd picture, newspaper, story paper, so-called comic book or publication or other printed, mimeographed, or published matter above described.

(2) The prohibitions and penalties imposed hereby shall not extend to publications within any constitutional guarantee of freedom of the press or freedom of religious worship, nor to publications privileged for medical instruction, privileged as official law enforcement bulletins or publications, nor to publications or reproductions of bona fide works of literature and the fine arts.

(3) No person shall, as a condition to a sale or delivery for resale of any publication not above-described or not within the purview of the foregoing section, require that the purchaser or consignee receive for resale or redistribution any other publication or article whatsoever within or reasonably believed by such purchaser or consignee to be within the purview of the foregoing section.

**History:** En. Secs. 1, 2, p. 255, L. 1891; amd. Sec. 560, Pen. C. 1895; re-en. Sec. 8391, Rev. C. 1907; re-en. Sec. 11134, R. C. M. 1921; amd. Sec. 1, Ch. 214, L. 1955.

#### **Amendment**

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

#### **Constitutionality**

Justice Frankfurter in his dissenting opinion in the Winters Case considered this to be one of the statutes throughout the country that would fall under the majority decision in that case as "void for vagueness." *Winters v. New York*, 333 U S 523, 92 L Ed 853, 68 S Ct 674.

**94-3602. (11135) Penalty.** (1) Every person violating any of the provisions of the next preceding section is guilty of a misdemeanor, and provided further that upon the second and each subsequent conviction thereunder, a jail sentence is mandatory.

**History:** En. Sec. 561, Pen. C. 1895; re-en. Sec. 8392, Rev. C. 1907; re-en. Sec. 11135, R. C. M. 1921; amd. Sec. 2, Ch. 214, L. 1955.

#### **Amendment**

The 1955 amendment added the proviso clause.

#### **Separability Clause**

Section 3 of Ch. 214, Laws 1955 read "If any clause, sentence, paragraph, section, subdivision or part of this act shall, for any reason, be adjudged by any court

of competent jurisdiction to be invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision or part directly adjudged to be invalid, inoperative or unconstitutional."

#### **Repealing Clause**

Section 4 of Ch. 214, Laws 1955 repealed all acts or parts of acts in conflict therewith.

### **CHAPTER 38—PERJURY—SUBORNATION OF PERJURY**

#### **94-3801. (10878) Perjury defined.**

##### **Venue**

Where prosecution for perjury is founded upon a false affidavit which was notarized in Lake County and delivered to Lewis and Clark County, apparently by mail, by virtue of section 94-3809, the

crime was completed when the affidavit left the defendant with the requisite intent. If upon having the affidavit notarized the defendant then gave it to some other person to mail or mailed it himself, then the crime was committed and the

proper county for venue was Lake County and not Lewis and Clark County. State v. Rother, 130 M 357, 303 P 2d 393. (Dissenting opinions, 130 M 357, 303 P 2d 393, at 397 and 409.)

#### 94-3802. (10879) Oath defined.

##### References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393, 395.

#### 94-3806. (10883) Irregularity in administering oath.

##### References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393, 394; (Dissenting opinion, 130 M 357, 303 P 2d 393 at 410.)

#### 94-3808. (10885) Knowledge of materiality of testimony not necessary.

##### References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 410 (dissenting opinion).

#### 94-3809. (10886) Making depositions, etc., when deemed complete.

##### Crime—When Complete

Under this section the crime of perjury is complete when the instrument is delivered by the accused to "any other person, with the intent that it be uttered or published as true." State v. Rother, 130 M 357, 303 P 2d 393, 395. (Dissenting opinions, 130 M 357, 303 P 2d 393 at 397, 409.)

##### Venue

Where prosecution for perjury is founded upon a false affidavit which was notarized in Lake County and delivered to

Lewis and Clark County, apparently by mail, by virtue of this section the crime was completed when the affidavit left the defendant with the requisite intent. If upon having the affidavit notarized the defendant then gave it to some other person to mail or mailed it himself, then the crime was committed and the proper county for venue was Lake County and not Lewis and Clark County. State v. Rother, 130 M 357, 303 P 2d 393. (Dissenting opinions, 130 M 357, 303 P 2d 393 at 397, 409.)

#### 94-3811. (10888) Punishment of perjury.

##### References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 410 (dissenting opinion).

### CHAPTER 39—PUBLIC OFFICERS—OFFENSES BY

#### 94-3908. (10828) Presenting fraudulent bills or claims for allowance, etc.

##### Operation and Effect

An information may be drawn consistent with section 94-1805 (obtaining money under false pretenses) which is not vulnerable to the objection that it is bad for

duplicity for charging an offense under this section. State v. Hale, 129 M 449, 291 P 2d 229, 234. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

#### 94-3920. (10925) Importing persons to discharge duties, etc.

##### Operation and Effect

This section did not change the common-law rule respecting a sheriff's liability

in damages. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

### CHAPTER 41—RAPE AND OTHER SEXUAL CRIMES

Section 94-4106. Lewd and lascivious acts upon children.

94-4120. Child under age of sixteen cannot be accomplice.

#### 94-4101. (11000) Rape defined.

##### Partial Repeal

Since this section is repealed by implication by Laws of 1943, Ch. 227 (10-601 et seq.), and the amendments thereof, in

sofar as it is in conflict with the substance and intent thereof, district criminal court was prohibited from trying child under the age of 16 years charged with

rape. He was solely under the exclusive jurisdiction of the juvenile court. *State ex rel. Dahl v. District Court*, — M —, 333 P 2d 495, 497, 499.

### Statutory Rape

Any man who accomplishes an act of sexual intercourse with a female under the age of 18 years, when such female is not his wife, is guilty of the crime of statutory rape. The corpus delicti is sufficiently proved by the testimony of the prosecutrix that she had sexual intercourse with the accused at the time and place

set forth in the information. *State v. Reid*, 127 M 552, 267 P 2d 986, 991.

### References

Cited in *State v. Lawrence*, 122 M 277, 201 P 2d 756; *State v. Sauter*, 125 M 109, 232 P 2d 731, 734.

Bill of particulars to one accused of rape. 5 ALR 2d 559.

Inclusion or exclusion of day of birth in computing age of prosecutrix. 5 ALR 2d 1153.

Exclusion of women from juries in prosecutions for rape. 9 ALR 2d 661.

## 94-4102. (11001) When physical ability must be proved.

### Partial Repeal

Laws 1943, Ch. 227 (10-601 et seq.), and the amendments thereof have repealed by implication this section and section 94-4101, insofar as they conflict with the substance and intent thereof and district

criminal court was prohibited from trying child under the age of 16 years charged with rape. He was solely under the exclusive jurisdiction of the juvenile court. *State ex rel. Dahl v. District Court*, — M —, 333 P 2d 495, 497, 499.

**94-4106. (11005) Lewd and lascivious acts upon children.** Any person over the age of eighteen (18) years, who shall wilfully and lewdly commit any lewd and lascivious act, other than the acts constituting other crimes provided in sections 94-4101 to 94-4108, upon or with the body or any part or member thereof, of a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, or of such child, shall be guilty of a felony, and shall be imprisoned in the state prison not exceeding twenty-five (25) years.

**History:** En. Sec. 1, Ch. 59, L. 1913; re-en. Sec. 11005, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1935; amd. Sec. 1, Ch. 57, L. 1959.

### Amendment

The 1959 amendment raised the penalty in this section from five years to twenty-five years.

### Evidence of Similar Acts

Where alleged lewd and lascivious acts upon the person of a minor child below the age of 16 years were committed on or about March 19, 1955, it was improper to permit state to show similar acts to those charged as having been committed on August 4, 1951, and in June 1951 in the State of California because of the remoteness in time. *State v. Nicks*, — M —, 332 P 2d 904, 905.

## 94-4109. (11008) Importation and exportation of females, etc.

### Constitutionality

This section (94-4109) is void since Congress has legislated upon this matter in the Mann Act (U. S. C. Tit. 18, §§ 2421-

2424). This section then, being in contravention of a valid law of the United States, is wholly void. *Ex Parte Anderson*, 125 M 331, 238 P 2d 910, 911, 912.

## 94-4118. (11030) Crime against nature.

### Where Accomplice's Testimony Insufficiently Corroborated

Where the corroborating evidence to the testimony of the accomplice showed that accomplice slept with the defendant and stayed overnight at defendant's house on several occasions, such evidence was insufficient to sustain the conviction as it does nothing more than show opportunity

on the part of defendant to have committed the crime. *State v. Gangner*, 130 M 533, 305 P 2d 338.

### References

Cited or applied in *State v. Searle*, 125 M 467, 239 P 2d 995, 996; *State v. Shambo*, 133 M 305, 322 P 2d 657.



**94-4119. (11031) Penetration sufficient to complete the crime.****Operation and Effect**

There must be penetration before a person can be convicted of the infamous

crime against nature. State v. Shambo, 133 M 305, 322 P 2d 657, 658.

**94-4120. Child under age of sixteen cannot be accomplice.** No child under the age of sixteen (16) years can be an accomplice to the commission or attempted commission of the infamous crime against nature.

**History:** En. Sec. 1, Ch. 68, L. 1951; amd. Sec. 1, Ch. 145, L. 1957.

and inserted the words "or attempted commission."

**Title of Act**

An act declaring a child under the age of fourteen years incapable of being an accomplice to the infamous crime against nature.

**Repealing Clauses**

Section 2 of Ch. 68, Laws 1951 and Sec. 2 of Ch. 145, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1957 amendment substituted "sixteen (16) years" for "fourteen (14) years"

**Effective Date**

Section 3 of Ch. 68, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 23, 1951.

**CHAPTER 42—RESCUES AND ESCAPES****94-4202. (10865) Retaking goods from custody of officer.****Unlawful Arrest**

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest

could not be justified as for violation of this section since officer did not have check in his possession under any process of law. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

**94-4203. (10866) Escapes from state prison—punishment.****References**

Cited or applied in State ex rel. Ball v. Burrell, — M —, 292 P 2d 144.

**CHAPTER 44—SEDITION—CRIMINAL SYNDICALISM—DISPLAY OF RED FLAG—SUBVERSIVE ORGANIZATIONS**

- Section 94-4411. Subversive Organization Registration Law—title of act.  
 94-4412. Purpose of act.  
 94-4413. Subversive organization defined.  
 94-4414. Organization subject to foreign control defined.  
 94-4415. Exceptions from definition of subversive organization.  
 94-4416. Organization pursuant to law—no exemption.  
 94-4417. Rules and regulations.  
 94-4418. Information filed with secretary of state.  
 94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state.  
 94-4420. Change of officers or purposes—filing with secretary of state.  
 94-4421. Semiannual statement of members.  
 94-4422. Report of meetings authorizing political action.  
 94-4423. Statements filed with secretary of state are public records.  
 94-4424. Anonymous letters prohibited.  
 94-4425. Penalty of organization for violating act.  
 94-4426. Penalty of officer of organization.  
 94-4427. Penalty of member of organization.

**94-4411. Subversive Organization Registration Law—title of act.** This act may be cited as the "Subversive Organization Registration Law."

**History:** En. Sec. 1, Ch. 215, L. 1951.

**Title of Act**

An act providing for the registration of certain societies, corporations, associations, political parties, assemblies, and other bodies and organizations; defining "subversive organizations," and requiring such organizations to file reports, documents and information with the secretary of state,

and providing for the making of rules and regulations by the secretary of state; prohibiting the sending and delivery to non-members of letters, leaflets, and other written or printed matter, unless the same bears the name of such organization and the names and addresses of its officers; and providing penalties for violations of this act.

**94-4412. Purpose of act.** This act is adopted in the exercise of the police power of this state for the protection of the public peace and safety by requiring the registration of subversive organizations which are conceived and exist for the purpose of undermining and eventually destroying the democratic form of government in this state and in the United States.

**History:** En. Sec. 2, Ch. 215, L. 1951.

**94-4413. Subversive organization defined.** As used in this title, "subversive organization" means every corporation, association, society, camp, group, political party, assembly, and everybody or organization composed of two [2] or more persons or members, which comes within all or any of the following descriptions:

(a) Which directly or indirectly advocates, advises, teaches, or practices, the duty, necessity, or propriety of controlling, conducting, seizing, or overthrowing the government of the United States, of this state, or of any political subdivision thereof by force or violence;

(b) Which is subject to foreign control as defined in section 4 [94-4414] hereof.

**History:** En. Sec. 3, Ch. 215, L. 1951.

**94-4414. Organization subject to foreign control defined.** An organization is "subject to foreign control" if it comes within either of the following descriptions:

(a) It solicits or accepts financial contributions, loans, or support of any kind directly or indirectly from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or political subdivision thereof, a political party in a foreign country, or an international political organization;

(b) Its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, a political party in a foreign country, or an international political organization.

**History:** En. Sec. 4, Ch. 215, L. 1951.

**94-4415. Exceptions from definition of subversive organization.** "Subversive organization" does not include any labor union or religious, fraternal, or patriotic organizations, society, or association whose objectives and aims do not contemplate the overthrow of the government of the United States, of this state or of any political subdivision thereof by force or violence.

**History:** En. Sec. 5, Ch. 215, L. 1951.

**94-4416. Organization pursuant to law—no exemption.** This act imposes additional requirements upon corporations, associations, or organizations which are subversive organizations. Neither the fact that such a corporation, association, or organization was organized pursuant to law nor that its affairs and activities are in any respect regulated by law exempts it from complying with this title.

**History:** En. Sec. 6, Ch. 215, L. 1951.

**94-4417. Rules and regulations.** The secretary of state may adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title, and may alter, amend, or repeal such rules and regulations.

**History:** En. Sec. 7, Ch. 215, L. 1951.

**94-4418. Information filed with secretary of state.** Every subversive organization in existence on July 1, 1951, shall within thirty (30) days after that date, and every subversive organization thereafter organized shall within ten (10) days after its organization, file with the secretary of state, on such forms and in such detail as he may prescribe, the following information and documents:

(a) A complete and detailed statement subscribed, under oath, by all of its officers, showing all of the following:

- (1) Its name and post office address;
- (2) The names and addresses of all its branches, chapters, and affiliates;
- (3) The names, nationalities, and residence addresses of its officers and members, and the qualifications required for membership in it;
- (4) The nature and extent of its existing and proposed aims, purposes, and activities;

(5) The times and places of its meetings;

(6) The description and location of the real property and the kind, quantity, and quality of the personal property owned by it, its assets and liabilities, the methods for the financing of its activities, and the names and addresses of all persons, organizations, and other sources who or which have contributed money, property, literature, or other things of value to the organization or any of its branches, chapters or affiliates for any of its purposes;

(7) Such other information as the secretary of state may from time to time require.

(b) A true copy, certified by all of its officers, of all of the following:

- (1) Its charter, articles of association, or constitution, and its by-laws, rules, and regulations;
- (2) Its oath, affirmation, or pledge of membership, if any;
- (3) Each agreement, resolution, and other instrument or document relating to its organization, powers, and purposes, and the powers and duties of its officers and members;
- (4) Each book, pamphlet, leaflet, or other printed, written, or illustrated matter directly or indirectly issued or distributed by it or in its behalf, or to or by its members with its knowledge, consent, or approval;
- (5) Such other documents as the secretary of state may from time to time require.



(c) A description of the uniforms, badges, insignia, or other means of identification prescribed by it, and worn or carried by its officers or members, or any of such officers or members.

(d) In case it is subject to foreign control, a statement of the manner in which it is subject.

History: En. Sec. 8, Ch. 215, L. 1951.

**94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state.** Every subversive organization shall within ten (10) days after any revision or amendment of, or other change with respect to, its charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or any part thereof, file with the secretary of state a true copy certified by all of its officers of the revised, amended, or changed charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or part thereof.

History: En. Sec. 9, Ch. 215, L. 1951.

**94-4420. Change of officers or purposes—filing with secretary of state.** Every subversive organization shall within ten (10) days after a change has been made in its officers, or in its aims, purposes, activities, property holdings, or methods and sources of financing its activities, file with the secretary of state a statement subscribed under oath by all of its officers showing the change.

History: En. Sec. 10, Ch. 215, L. 1951.

**94-4421. Semiannual statement of members.** Every subversive organization shall at least once in each period of six (6) months file with the secretary of state a statement subscribed under oath by all of its officers showing the names and residence addresses of all persons who have been admitted to membership during that period or, if no members have been admitted during that period, a statement to that effect similarly subscribed.

History: En. Sec. 11, Ch. 215, L. 1951.

**94-4422. Report of meetings authorizing political action.** Every subversive organization shall within ten (10) days after the adoption thereof file with the secretary of state, on such form and in such detail as he may prescribe, each resolution adopted, or the minutes of any meeting held by it, authorizing or providing for concerted action by its officers, members, or a part of its membership, to promote or prevent the passage of any act of legislation by any local, state, or federal legislative body, or to support or defeat any candidate for public office.

History: En. Sec. 12, Ch. 215, L. 1951.

**94-4423. Statements filed with secretary of state are public records.** All statements or documents filed with the secretary of state under this title [94-4411 to 94-4427] are public records and shall be open to public examination and inspection at all reasonable hours.

History: En. Sec. 13, Ch. 215, L. 1951.

**94-4424. Anonymous letters prohibited.** A subversive organization shall not send, deliver, mail or transmit, or suffer or permit to be sent, delivered, mailed, or transmitted, to any person in this state who is not a

member of the organization any anonymous letter, document, leaflet, or other written or printed matter. All letters, documents, leaflets, or other written or printed matter issued by a subversive organization which are intended to come to the attention of a person who is not a member of the organization shall bear the name of the organization and the name and residences of its officers.

History: En. Sec. 14, Ch. 215, L. 1951.

**94-4425. Penalty of organization for violating act.** Any subversive organization which violates any provisions of this title [94-4411 to 94-4427] is guilty of a felony punishable by fine of not less than one thousand dollars (\$1,000.00) nor more than ten thousand dollars (\$10,000.00). Any such violation constitutes a separate and distinct offense for each day, or part thereof, during which it is continued.

History: En. Sec. 15, Ch. 215, L. 1951.

**94-4426. Penalty of officer of organization.** Any officer or member of the board of directors, board of trustees, executive committee, or other similar governing body of a subversive organization who violates any provision of this title [94-4411 to 94-4427], or permits or acquiesces in the violation of any provision of this title by the organization is guilty of a felony punishable by fine of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00), or by imprisonment in a state prison for not less than six (6) months nor more than five (5) years, or by both.

History: En. Sec. 16, Ch. 215, L. 1951.

**94-4427. Penalty of member of organization.** Any person who becomes or remains a member of any subversive organization, or attends a meeting thereof, with knowledge that the organization has failed to comply with any provision of this title [94-4411 to 94-4427], is guilty of a misdemeanor punishable by fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for not less than ten (10) days nor more than one (1) year, or by both.

History: En. Sec. 17, Ch. 215, L. 1951.

#### **Separability of Provisions**

Section 18 of Ch. 215, L. 1951 read, "If any provision of this act or the application thereof to any person, corporation, association, organization, or circumstances, is for any reason held invalid, ineffective, or unconstitutional by a court of competent jurisdiction, the remainder of this act, or

the application of such provision to other persons, corporations, associations, organizations, or circumstances, shall not be affected thereby, and the legislative assembly hereby declares the severability of the several sections and provisions of this act, and that it would have enacted the same without the invalid provisions or the invalid applications, as the case may be, had such invalidity been apparent."

### **CHAPTER 47—PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PROVISIONS**

Section 94-4720. Civil rights of convict suspended.

#### **94-4708. (11588) Removal from office for neglect of official duty.**

##### **Operation and Effect**

This section does not restrain or limit the power of the governor to remove the third member of the unemployment com-

pensation commission. State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

**94-4710. (11590) Attempts to commit crime, when punishable.****References**

Cited or applied in *State v. Quinlan*,  
126 M 52, 244 P 2d 1058, 1061 (dis-

senting opinion); *State v. Shambo*, 133 M  
305, 322 P 2d 657, 658.

**94-4713. (11593) Second offense, how punished after conviction, etc.****Identity of Person under Prior Conviction**

Before a person can be convicted of the former convictions there must be proof aside from the judgment of prior convictions that the person convicted was in fact the defendant. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1115.

**Proof of Nature of Crime**

When a judgment of prior conviction is offered as evidence the state must prove that the crime involved was a felony within the meaning of this section. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1115.

**94-4715. (11595) Foreign conviction for former offense.****Identity of Person under Prior Conviction**

Before a person can be convicted of the former convictions there must be proof aside from the judgment of prior convictions that the person convicted was in fact the defendant. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1115.

**Proof of Nature of Crime**

When a judgment of prior conviction is offered as evidence the state must prove that the crime involved was a felony within the meaning of this section. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1115.

**94-4720. (11600) Civil rights of convict suspended.** A sentence of imprisonment in the state prison for any term less than life suspends all the civil rights of the person so sentenced, and forfeits all public offices and private trusts, authority, or power, during such imprisonment. The governor has power to restore to citizenship any person convicted of any offense committed against the laws of the state, upon cause being shown, either after the expiration of sentence, or after pardon. The governor may request an investigation by the board of pardons to determine if such restoration to citizenship be advisable.

**History:** En. Sec. 154, p. 217, Bannack Stat.; re-en. Sec. 186, p. 313, Cod. Stat. 1871; re-en. Sec. 213, 4th Div. Rev. Stat. 1879; re-en. Sec. 279, 4th Div. Comp. Stat. 1887; amd. Sec. 1239, Pen. C. 1895; re-en. Sec. 8904, Rev. C. 1907; re-en. Sec. 11600, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1955. Cal. Pen. C. Sec. 673.

**Amendment**

The 1955 amendment added the second and third sentences.

**Effective Date**

Section 2 of Ch. 87, Laws 1955 provided the act should be in effect from and after April 1, 1955.

**94-4723. (11603) Convict competent witness.****Proper Method to Impeach**

Where a defendant upon cross-examination admits his prior convictions of felonies it is error for the court to then allow the state to introduce into evidence the judgment record of prior convictions, for

it serves no useful purpose since the credibility has already been impeached and it may weigh too heavily against the defendant. *State v. Coloff*, 125 M 31, 231 P 2d 343, 344.

**CHAPTER 48—RIGHTS OF DEFENDANT****94-4801. (11606) No person punishable but on legal conviction.**

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.



**94-4804. (11609) Parties to a criminal action.****Operation and Effect**

In a criminal case the state is the opposite party to the defendant, and section 93-1901-9, relating to calling the opposite party, is not applicable to a criminal proceeding. *State v. Moorman*, 133 M 148, 321 P 2d 236, 238.

**References**

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

**94-4806. (11611) Rights of defendant in a criminal action.****Impartial Jury**

Trial court was in error for refusing to grant the defendant a change of venue where evidence disclosed that local newspaper had fanned the feeling of the community against the defendant, that the local people believed the defendant to be guilty, and that the county officials themselves felt that the feeling against the defendant was so high that they moved him for safety to the state prison. *State v. Dryman*, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

**Right to Appear and Defend by Counsel**

By section 94-6512 a defendant is guaranteed counsel by appointment of the court, if he cannot himself employ an at-

torney. It is equally the duty of the court to make the appointment of counsel effective, i. e. to give court-appointed counsel a reasonable time for the preparation of his case after he has been appointed. *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

Where counsel was appointed by the court, after withdrawal of defendant's original counsel, but trial was commenced three days after such appointment, such appointment was made purposeless as it is the duty of the court to make the appointment effective by giving a reasonable time for the preparation of the case. *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

## CHAPTER 49—DEFINITIONS—PROSECUTION OF CRIMINAL ACTIONS —JURISDICTION OF COURTS

**94-4910. (11624) Leave to file information.****Sufficiency of Facts in Information**

Where the motion for leave to file the information disclosed that decedent was shot at close range with a high powered rifle and killed on defendant's farm, that the coroner's jury verdict was that the killing was intentional, that evidence of the commission of the crime and guilt of the

defendant was introduced at a habeas corpus hearing, that the county attorney had made a complete investigation, and that as a result he believed the defendant was guilty, the motion was sufficient to grant leave to file information. *State v. London*, 131 M 410, 310 P 2d 571, 581.

**94-4916. (11630) Jurisdiction of justices of the peace.****Compiler's Note**

The reference to section 94-1307 in this section should read section 94-603.

**References**

Cited in *State v. Holt*, 121 M 459, 194 P 2d 651, 662; *State ex rel. Borberg v. District Court*, 125 M 481, 240 P 2d 854, 856.

## CHAPTER 53—SUPPRESSION OF RIOTS

**94-5304. (11658) Magistrates and officers to command rioters to disperse.****Liability of Sheriff**

This section is merely declaratory of the common law and the sheriff is not liable

in damages for damage caused by mob violence. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

**94-5305. (11659) To arrest rioters if they do not disperse.****Liability of Sheriff**

This section is merely declaratory of the common law and the sheriff is not

liable in damages for damage caused by mob violence. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

**94-5314. Liability of officers for neglect of duties, etc.****Liability of Sheriff**

There was no provision imposing liability for damages upon the sheriff prior to

the enactment of this law. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

**CHAPTER 55—REMOVAL OF OFFICERS OTHERWISE  
THAN BY IMPEACHMENT**

**94-5501. (11687) Officers subject to removal.****Operation and Effect**

These sections do not restrain or limit the governor's power of removal of the third member on the unemployment com-

pensation commission. *State ex rel. Bonner v. District Court*, 122 M 464, 206 P 2d 166, 171.

**94-5516. (11702) Removal of public officers by summary proceedings.****Disqualification of Judge**

Proceedings under this section for the removal of a public officer are governed by the rules of practice in civil cases and therefore subd. 4 of section 93-901 relating to disqualification of judges applies. This rule is inapplicable however to prosecutions under the section for the charging and collecting of illegal salaries or fees. *State ex rel. Sullivan v. District Court*, 122 M 1, 196 P 2d 452, 455.

**Operation and Effect**

Under this section of the Code it is the public policy of the state, in cases where a county officer is charged with collecting illegal fees, that such officer be entitled, as a matter of defense, to offer evidence of his good faith or honest mistake and the value received by the county. *State v. Hale*, 126 M 326, 249 P 2d 495, 496.

**Time for Appearance of Party**

That portion of this section providing that the court must cite a party to appear "at a time not more than ten nor less than five days from the time the accusation was presented" is directory rather than mandatory. *State ex rel. Sullivan v. District Court*, 122 M 1, 196 P 2d 452, 454.

In computing time under the provision of this section which provides that the court must cite the party to appear "not more than ten nor less than five days" both the first and last days should be excluded. *State ex rel. Sullivan v. District Court*, 122 M 1, 196 P 2d 452.

**References**

Cited or applied in *State ex rel. Olsen v. Public Service Comm.*, 131 M 104, 308 P 2d 633, 639.

**CHAPTER 56—LOCAL JURISDICTION OF PUBLIC OFFENSES**

**94-5602. (11704) Offenses commenced without, but consummated, etc.****References**

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 412 (dissenting opinion).

**94-5605. (11707) Offense committed partly in one county and partly, etc.****References**

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 407 (dissenting opinion).

**CHAPTER 57—TIME OF COMMENCING CRIMINAL ACTIONS**

**94-5703. (11724) Limitation of one year in misdemeanors.****References**

Cited in *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 59—WARRANT OF ARREST—PROCEEDINGS  
ON EXECUTION THEREOF**94-5904. (11736) To what peace officers warrants are to be directed.****Operation and Effect**

The sheriff of Flathead County has authority to arrest person in Powell County under warrant issued in Flathead County upon such person's release from prison. Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

**References**

Cited or applied in State v MacLean, 129 M 500, 291 P 2d 250, 252.

**94-5905. (11737) To what peace officers warrants are to be directed, etc.****References**

Cited or applied in In re Malone, 130 M 622, 299 P 2d 455.

CHAPTER 60—ARRESTS—BY WHOM AND HOW MADE—CLOSE  
PURSUIT—RETAKING AFTER ESCAPE

Section 94-6029. Definition.

94-6030. Authority to establish roadblocks.

94-6031. Minimum requirements.

94-6032. Existing law preserved.

94-6033. Penalty.

**94-6003. (11753) Arrests by peace officers.****Unlawful Arrest**

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified by alleging a violation of sections 94-35-169 and 94-4202.

Harrer v. Montgomery Ward & Co, 124 M 295, 221 P 2d 428, 435.

**References**

Cited or applied in State v. Storm, 124 M 102, 220 P 2d 674, 677; State v. MacLean, 129 M 500, 291 P 2d 250, 252.

**94-6005. (11755) Magistrate may order arrest.****References**

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

**94-6009. (11759) Warrant must be shown, when.****References**

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

**94-6016. (11766) Person arrested without a warrant to be taken before, etc.****References**

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

**94-6017. (11767) Arrest by telegraph.****References**

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

**94-6029. Definition.** For the purpose of this act, a "temporary road-block" means any structure, device, or means used by the duly elected or appointed law-enforcement officers of this state, and their deputies, for the purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.



**History:** En. Sec. 1, Ch. 60, L. 1959.

**Title of Act**

An act authorizing the establishment of temporary roadblocks on the highways of the state of Montana to identify drivers and apprehend law violators; by defining

a temporary roadblock and the purpose for which it may be used; by providing minimum requirements in establishing temporary roadblocks and other matters properly relating thereto; by fixing penalty for violation of act; by repealing all acts or parts of acts in conflict herewith.

**94-6030. Authority to establish roadblocks.** The duly elected or appointed law-enforcement officers of this state, and their deputies, are hereby authorized to establish, in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, and apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States, who are using the highways of this state.

**History:** En. Sec. 2, Ch. 60, L. 1959.

**94-6031. Minimum requirements.** For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

1. The temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than one hundred (100) yards, in either direction.

2. At the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than fifty (50) yards, in both directions, either in daytime or darkness.

3. At the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic, at a distance of not less than one hundred (100) yards.

4. At a distance of not less than two hundred (200) yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway, containing any wording of sufficient size and luminosity, to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

**History:** En. Sec. 3, Ch. 60, L. 1959.

**94-6032. Existing law preserved.** Nothing in this act shall be deemed to limit, or encroach upon the existing authority of Montana law-enforcement officers in the performance of their duties involving traffic control.

**History:** En. Sec. 4, Ch. 60, L. 1959.

**94-6033. Penalty.** Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

**History:** En. Sec. 5, Ch. 60, L. 1959.

all acts or parts of acts in conflict therewith.

**Repealing Clause**

Section 6 of Ch. 60, Laws 1959 repealed

#### CHAPTER 61—EXAMINATION AND COMMITMENT OR DISCHARGE OF DEFENDANT

##### 94-6101. (11773) Magistrate to inform the defendant of the charge, etc.

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

##### 94-6116. (11788) Order for bail on commitment.

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 440.

#### CHAPTER 62—PRELIMINARY PROVISIONS—FILING THE INFORMATION

##### 94-6201. (11798) Offenses, how prosecuted.

**References**

Cited or applied in State ex rel. Bor-

berg v. District Court, 125 M 481, 240 P 2d 854, 860.

##### 94-6206. (11803) Duty of court when county attorney does not file, etc.

**References**

Cited or applied in State ex rel. Bor-

berg v. District Court, 125 M 481, 240 P 2d 854, 860.

##### 94-6207. (11804) Information may be amended.

**Operation and Effect**

Where court allowed state to amend information charging defendant with incest by changing "fornication" to "adultery" there was no substantial change in the charge and only touched a matter of form. Whether the defendant was married or unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse charged is proved. State v. Kuntz, 130 M 126, 295 P 2d 707, 710.

**Waiver of Objection**

Where, after plea of not guilty, county attorney asked permission to amend information and counsel for defendant stated there was no objection, any objection to the amendment of the information to include a prior conviction was waived. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

##### 94-6208. (11805) Indorsement on information.

**Application**

The reason for the statutory requirement that the names of witnesses be indorsed on the information is to safeguard defendant against surprise and unfair advantage. There was no unfair advantage taken of defendant when the county attorney indorsed the name of a witness after impaneling a jury because he did

not know of the existence of the witness at the time when the information was filed and gave notice to the defendant's attorney at that time and offered to agree to a reasonable delay in the trial in order that the defendant could examine the witness and secure evidence to meet his testimony. State v. Phillips, 127 M 381, 264 P 2d 1009, 1015.

#### CHAPTER 63—THE GRAND JURY—ITS FORMATION—POWERS AND DUTIES—FINDING AND PRESENTING AN INDICTMENT

##### 94-6314. (11819) Retirement of the grand jury—discharge of.

**"Final Adjournment" When Court Always Open**

Although district court is always open

and each term continues until succeeding term, the terms as fixed by the court limit the existence of the grand jury, the be-

ginning of each term constituting a "final adjournment" of the preceding term within the meaning of this section. State ex rel.

Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

**94-6324. (11829) When and from whom they may ask advice, etc.**

**Special Prosecutor—Appearance Before Grand Jury**

County attorney cannot delegate to unofficial counsel his right to advise the grand jury, assist them in their investigations and examine witnesses, and an order of the district judges appointing such special prosecutor when the county attorney was present and able to act could not give such authority. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

The appearance of "special prosecutor" before the grand jury was ground for

setting aside the indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

**References**

Cited or applied in State v. Cockrell, 131 M 254, 309 P 2d 316, 320.

**94-6331. (11836) Names of witnesses inserted at foot of indictment.**

**Appeal After Conviction**

If person has gone to trial under indictment with witnesses names designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

**Failure to Endorse Names—Effect**

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

If there were no witnesses it was the duty of the prosecution, on objection of defendant, to so state, either by a verified pleading or under oath. State ex rel. Porter

v. District Court, 124 M 249, 220 P 2d 1035, 1043.

**Fictitious Names**

If there were witnesses identified as John Doe and Richard Roe it is indefensible for the prosecution to conceal their identity from accused merely because the prosecutor believes that a disclosure of their true names is not vital or necessary to prepare a defense. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

**Operation and Effect**

The statute requires the endorsement of names of all witnesses, not merely the names of witnesses the state believes to be important. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1041.

**94-6332. (11837) Indictment, how presented and filed.**

**References**

Cited or applied in State ex rel. Bor-

berg v. District Court, 125 M 481, 240 P 2d 854, 860.

**94-6333. (11838) Indictment to be signed by prosecuting attorney, etc.**

**References**

Cited or applied in State ex rel. Porter

v. District Court, 124 M 249, 220 P 2d 1035, 1046.

**94-6334. (11839) Warrant to issue.**

**References**

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

CHAPTER 64—RULES OF PLEADING AND FORM OF INFORMATION AND INDICTMENT

**94-6401. (11841) Forms and rules of pleading.**

**Operation and Effect**

No section of the Criminal Code can

be found directing or requiring a bill of particulars to be furnished to a de-



fendant; therefore, no bill of particulars may be required or ordered. *State v. Bosch*, 125 M 566, 242 P 2d 477, 487.

#### 94-6403. (11843) Indictment or information, what to contain.

##### Assault in First Degree

Contentions of defendant that trial court erred in overruling his demurrer to the amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, were without merit, where the amended information complied with the requirements of this section and sections 94-6401, 94-6404, 94-6405 and 94-6412. *State v. McLeod*, 131 M 478, 311 P 2d 400, 406.

##### Bill of Particulars

In a criminal case no bill of particulars may be required or ordered. *State v. Bosch*, 125 M 566, 242 P 2d 477, 487.

#### 94-6404. (11844) Form of.

##### Sufficiency

Information which charged the defendant with manslaughter in the form established in this section and used the words "did then and there wilfully, wrongfully, unlawfully, knowingly and feloniously kill one Duane Leslie Egge, a human being of the age of five years, contrary" was sufficient. *State v. Duncan*, 130 M 562, 305 P 2d 761, 763.

#### 94-6405. (11845) It must be direct and certain.

##### Assault in First Degree

Defendant's contentions that trial court erred in overruling his demurrer to the amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information were without merit, where the amended information complied with the requirements of this section and sections 94-6401, 94-6403, 94-6404 and 94-6412. *State v. McLeod*, 131 M 478, 311 P 2d 400, 406.

#### 94-6407. (11847) Must charge but one offense and in one form, etc.

##### Election of Charge

Every act of sexual intercourse constituting rape is a separate offense and where the information charges defendant and another jointly with accomplishing "an act of sexual intercourse" and the evidence is that defendant accomplished an act of sexual intercourse and also that he assisted the other in the act of inter-

#### 94-6412. (11852) Indictment or information, when sufficient.

##### Assault in First Degree

Trial court committed no error in overruling defendant's demurrer to amended information and in overruling his objection to the introduction of evidence and

##### References

Cited or applied in *State v. McLeod*, 131 M 478, 311 P 2d 400, 406.

(This case expressly overrules any statement or holding to the contrary in *State v. Gondeiro*, 82 M 530, 268 P 507; *State v. Shannon*, 95 M 280, 26 P 2d 360; *State v. Stevens*, 104 M 189, 65 P 2d 612; *State v. Hahn*, 105 M 189, 72 P 2d 459; *State v. Robinson*, 109 M 322, 96 P 2d 265, and any other such statements or holdings by this court.)

##### References

Cited or applied in *State v. Tursich*, 127 M 504, 267 P 2d 641, 643; *State v. Duncan*, 130 M 562, 305 P 2d 761, 763; *State v. Haley*, 132 M 366, 318 P 2d 1084, 1085.

##### References

Cited or applied in *State v. Bosch*, 125 M 566, 242 P 2d 477, 487; *State v. McLeod*, 131 M 478, 311 P 2d 400, 406; *State v. Haley*, 132 M 366, 318 P 2d 1084, 1085.

##### Bill of Particulars Not Available

In a criminal case no bill of particulars may be required or ordered. *State v. Bosch*, 125 M 566, 242 P 2d 477, 487. (This case expressly overrules any statement or holding to the contrary made by the court.)

##### References

Cited or applied in *State v. Duncan*, 130 M 562, 305 P 2d 761, 763; *State v. Haley*, 132 M 366, 318 P 2d 1084, 1085.

course the court should have granted the defendant's motion that the state elect whether it was prosecuting defendant for his accomplished intercourse with the prosecutrix or for aiding and assisting the other defendant in consummating the other defendant's sexual intercourse with the prosecutrix. *State v. Sauter*, 125 M 109, 232 P 2d 731, 734.

his motion to dismiss the information, where the amended information complied with the requirements of this section and sections 94-6401, 94-6403 to 94-6405. *State v. McLeod*, 131 M 478, 311 P 2d 400, 406.

**Manslaughter**

Information for manslaughter in the form prescribed in section 94-6404, which complied with the requirements of sections 94-6403, 94-6405, and met the tests provided in this section, was sufficient. *State v. Haley*, 132 M 366, 318 P 2d 1084, 1085.

**References**

Cited in *State v. Tursich*, 127 M 504, 267 P 2d 641, 643; *State v. Duncan*, 130 M 562, 305 P 2d 761, 763.

**94-6423. (11863) Distinction between accessory before the fact, etc.****Aiding and Abetting**

While the statute defines larceny as the taking of property from the person of another yet, it is sufficient to show the defendant's guilt that he aided or abetted in the commission of the crime. *State v. Maciel*, 130 M 569, 305 P 2d 335, 336.

section 94-204, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. *State v. Keller*, 126 M 142, 246 P 2d 817, 821.

**Operation and Effect**

Under this section and section 94-204, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. *State v. Simon*, 126 M 218, 247 P 2d 481, 485.

**Instructions**

Where a verbal declaration of one co-defendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and

**94-6428. (11868) Of what offense a defendant may be convicted.****Verdict for Lesser Offense**

Where defendant was charged with murder in the second degree it was permis-

sible for the jury to find him guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 288.

**94-6434. (11874) When not material.****Failure to Endorse True Names of Witnesses on Indictment**

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be

required to sustain the conviction if possible and burden would be on defendant to show prejudice. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

**CHAPTER 65—ARRAIGNMENT OF DEFENDANT**

Section 94-6513. Compensation of attorney for accused.

**94-6501. (11875) Defendant must be arraigned in the court, etc.**

Admissibility of confession as affected by delay in arraignment of prisoner. 19 ALR 2d 1331.

**94-6512. (11886) Right to counsel on arraignment.****Court Appointed Counsel**

Where counsel was appointed by the court, after withdrawal of defendant's original counsel, but trial was commenced three days after such appointment, such appointment was made purposeless as it is

the duty of the court to make the appointment effective by giving a reasonable time for the preparation of the case. *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

**94-6513. (11887) Compensation of attorney for accused.** Whenever, in a criminal action or proceeding in the district court, an attorney-at-law de-

fends a person charged with any offense, by order of the court, on the ground that the accused is unable to procure or employ counsel, the county in which such criminal action or proceeding may have arisen is liable to pay such attorney for his services such sum as the judge certifies to be a reasonable compensation therefor.

**History:** En. Sec. 1, p. 12, L. 1881; re-en. Sec. 197, 3d Div. Comp. Stat. 1887; amd. Sec. 1892, Pen. C. 1895; amd. Sec. 1, Ch. 33, L. 1903; re-en. Sec. 9189, Rev. C. 1907; re-en. Sec. 11887, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1949.

#### Amendment

The 1949 amendment omitted a portion of this section which placed specific limitations on the amount allowed as follows, capital cases not to exceed \$100, other

felonies not to exceed \$50, and in other cases not to exceed \$25.

#### Repealing Clause

Section 2 of Ch. 38, Laws 1949 repealed all acts or parts of acts in conflict therewith.

#### References

Cited or applied in *State ex rel. Irvine v. District Court*, 125 M 398, 239 P 2d 272, 281.

### CHAPTER 66—SETTING ASIDE THE INDICTMENT OR INFORMATION

#### 94-6601. (11891) Indictment, when set aside on motion.

##### Failure To Endorse Names on Indictment

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

Indictment must be set aside where witnesses names on indictment were Richard Roe and John Doe and witnesses real names were not supplied to defendant and if there were no witnesses that fact should be shown by the prosecution either by a verified pleading or under oath. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043. (In this case it was said that if other grounds had not required setting aside of indictment, court would have been disposed to return case to trial court to permit defendant to interrogate prosecutor and grand jury foreman as to whether there were witnesses whose names were not endorsed on indictment.)

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

##### Grounds Exclusive

The grounds for setting aside an indictment of a grand jury as set forth in this section are exclusive. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1037.

##### Presence of Unauthorized Person

Where there has been a violation of subd. 3 of this section the accused need not show prejudice, but the very appearance of an unauthorized person before the grand jury is sufficient to set aside the indictments. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1051.

##### Presence of Unauthorized Person—Special Prosecutor Before Grand Jury

The appearance of "special prosecutor" before the grand jury was ground for setting aside the indictment. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1051.

##### Presence While Indictment under Consideration

A case is "under consideration" before the grand jury within the meaning of subsection 3 of this section when witnesses are being examined. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1044.

##### References

Cited or applied in *State ex rel. Porter v. First Judicial Dist.*, 123 M 447, 215 P 2d 279; *State v. Bosch*, 125 M 566, 242 P 2d 477, 487.



**94-6602. (11892) Defendant waives objections, etc.****Amendment of Information**

There was no error in permitting information to be amended to allege prior conviction when there was no objection by defendant and defendant's attorney consented to its filing. *State ex rel. Treat v. District Court*, 122 M 249, 200 P 2d 248.

**References**

Cited or applied in *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1038.

**94-6603. (11893) Motion, when heard—if denied or granted, etc.****References**

Cited or applied in *State ex rel. Porter v. First Judicial Dist.*, 123 M 447, 215 P 2d 279.

**94-6604. (11894) Effect of order of resubmission.****Cross-Reference**

See note to sec. 94-6605. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1051.

**94-6605. (11895) Order no bar to another prosecution.****Operation and Effect**

Where district court was ordered to set aside indictment on ground set forth in subd. 3 of section 94-6601, prosecution for the offenses charged was not barred but the cases were ordered resubmitted to the

county attorney in accordance with section 94-6604 for the filing of such information as he believes necessary. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1051.

## CHAPTER 67—DEMURRER

**94-6701. (11896) Pleading on part of defendant.****Operation and Effect**

This section is exclusive and there is no section of the Criminal Code directing or requiring a bill of particulars to be furnished to a defendant charged with a criminal offense. *State v. Bosch*, 125 M 566, 242 P 2d 477, 487.

**References**

Cited or applied in *State ex rel. Borberg v. District Court*, 125 M 481, 240 P 2d 854, 857, 859; *State v. Duncan*, 130 M 562, 305 P 2d 761, 762.

**94-6702. (11897) Demurrer on plea, when put in.****Operation and Effect**

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. *State v. Hale*, 129 M

449, 291 P 2d 229, 230. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

**References**

Cited or applied in *State v. Duncan*, 130 M 562, 305 P 2d 761, 762.

**94-6703. (11898) Grounds of demurrer.****Facts Stated Do Not Constitute a Public Offense**

Information charging a violation of section 94-1805 (obtaining money under false pretenses) which only avers that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. *State v. Hale*, 129 M 449, 291 P 2d 229, 232. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

**Sufficiency of Information**

An information which charges defendant with an infamous act against nature and then in describing the manner in which the crime was committed it alleged an assault, it is not open to the charge that it is duplicitous. Allegations with respect to the assault are merely descriptive of the means of accomplishing the infamous crime against nature which never could be perpetrated against an

unwilling participant without an assault.  
State v. McSloy, 127 M 265, 261 P 2d 663,  
664.

#### References

Cited or applied in State v. Bosch,  
125 M 566, 242 P 2d 477, 487.

### 94-6711. (11906) Objections, forming ground of demurrer, when taken.

#### References

Cited or applied in State v. Hale, 129 M

449, 291 P 2d 229, 233; State v. MacLean,  
129 M 500, 291 P 2d 250, 251.

## CHAPTER 68—PLEAS

### 94-6801. (11907) The different kinds of pleas.

#### References

Cited or applied in State ex rel. Borberg  
v. District Court, 125 M 481, 240 P 2d

854, 857, 859, 861; State v. Porter, 130 M  
299, 300 P 2d 952, 954.

### 94-6802. (11908) Plea, how put in and its form.

#### Written "Special Plea in Bar" Not Authorized

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written special plea in bar and ordering

the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-100-4. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 861.

### 94-6803. (11909) Plea of guilty, how put in and when withdrawn.

#### Denial of Motion to Withdraw

Denial of motion to withdraw plea of guilty will not be reversed where chief contention was that he was misled by the erroneous advice of counsel as to his guilt under the law, when from the record of the trial court there was evidence which would have justified a finding of guilty, regardless of the correctness of the counsel's interpretation of the law. State v. Nance, 120 M 152, 184 P 2d 554, 561.

#### Discretion of Court

The granting or refusal of permission to withdraw a plea of guilty and substitute a plea of not guilty rests in the discretion of the trial court and is subject to review only where an abuse of discretion is shown. State v. Nance, 120 M 152, 184 P 2d 554, 560.

#### Guilty Plea Under Agreement with Prosecutor

While the supreme court will not encourage the making of bargains with persons charged of crime, where a defendant has changed his plea of not guilty to a plea of guilty on an agreement with the prosecuting attorney as to recommendation for sentences which were carried out, the supreme court, will not, after he obtained the benefits of the agreement, aid him in escaping its obligations, by ordering a withdrawal of the guilty plea. State v. Nance, 120 M 152, 184 P 2d 554, 561.

#### Motion to Withdraw—Time for Filing

In order to receive favorable considera-

tion an application to withdraw a plea of guilty should be made within a reasonable time. State v. Nance, 120 M 152, 184 P 2d 554, 561.

#### When Plea of Guilty may be Withdrawn after Judgment

Where the evidence discloses that there was a grave doubt that the defendant had the mental capacity to appreciate and understand what he was doing and the consequences thereof, when without benefit of counsel, he pleaded guilty to the charge of murder, defendant should have been allowed to withdraw his plea of guilty and enter a plea of not guilty. State v. Dryman, 125 M 500, 241 P 2d 821.

#### Withdrawal of Plea of Guilty after Judgment

Held, on the facts of the particular case, that where the defendant at the time of entering his plea of guilty thought that he had an understanding as to what his sentence would be; that no direct commitment was made to him by any of the officers but the officers had made statements to others who were in contact with the defendant and upon whose advice he relied, the ends of justice would be best served by permitting the defendant to change his plea. State v. Morgan, 131 M 58, 307 P 2d 244.

#### References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 859.

**94-6805. (11911) What may be given in evidence under plea of not guilty.****Operation and Effect**

The bar to a prosecution for misdemeanor where defendant is not brought to trial within six months after the filing of

the information as provided for in section 94-9507 may properly be raised by a plea of not guilty. State v. Porter, 130 M 299, 300 P 2d 952, 954.

**CHAPTER 69—CHANGE OF PLACE OF TRIAL OR JUDGE**

Section 94-6913. Disqualification of judge—affidavit—number of changes authorized—calling in of judge to preside.

**94-6901. (11916) What petition to contain.****Application**

Trial court was in error for refusing to grant a change of venue where evidence disclosed that local newspapers had fanned the feeling of the community against the defendant and that county officials themselves felt that feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

**Change of Place of Trial**

Where Supreme Court ordered a new trial and that it be had in some county not adjacent to Toole county because of the prejudice of the people in Toole county, trial court erred in directing that the new trial take place in Teton county. Although Teton county is not adjoining Toole county but is separated by some twenty miles, yet the word adjacent has no arbitrary meaning or definition; the term is a relative and not an absolute one,

and the exact meaning of which, in any particular case, is determinable principally by the context in which it is used. State ex rel. Dryman v. District Court, 128 M 402, 276 P 2d 969, 970.

An application for a change of place of trial is addressed to the sound discretion of the trial court and a clear abuse of discretion must be shown, or the ruling of the trial court will not be disturbed. State v. Bischert, 131 M 152, 308 P 2d 969, 971.

In support of an application for change of place of trial a denial of bail could not be claimed as showing prejudice by the trial judge for such is a mere preliminary matter and has nothing to do with the trial on the merits. State v. London, 131 M 410, 310 P 2d 571, 580.

**Prejudice of Judge**

Action of a judge in refusing to set bond pending appeal from a manslaughter conviction is not an act which prejudices a defendant during a trial. State v. Bischert, 131 M 152, 308 P 2d 969, 971.

**94-6906. (11921) When change of place of trial not granted.****References**

Cited or applied in State v. Searle, 125 M 467, 239 P 2d 995, 999.

**94-6913. Disqualification of judge—affidavit—number of changes authorized—calling in of judge to preside.** A district judge must not sit or act as such in any criminal action or proceeding when either party makes and files an affidavit, as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge by reason of the bias and prejudice of such judge. Such affidavit may be made by any party to the criminal action, motion or proceeding, personally, or by his attorney or guardian and shall be filed with the clerk of the district court in which the same may be pending, at least fifteen days prior to the trial of said cause, or any retrial thereof after appeal. Upon the filing of the affidavit, the judge, as to whom said disqualification is averred, shall be without authority to act further in the criminal action, motion or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or pro-



ceeding to some other court, nor to the power of calling in another district judge to sit and act in such criminal action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. Not more than one judge can be disqualified for bias and prejudice, in said criminal action or proceeding, at the instance of the prosecution and not more than one judge at the instance of the defendant or defendants.

If there be more than one judge in any judicial district in which said affidavit is made and filed, another judge residing in the judicial district wherein the affidavit is made and filed must be called in to preside in such criminal action, motion or proceeding; if there be but one judge in the judicial district, then a district judge of another judicial district must be called in to preside in such criminal action, motion or proceeding; when another judge has assumed jurisdiction of a criminal action, motion or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in.

If either party in any matter above mentioned shall file the affidavit as herein provided such party may not complain of any reasonable delay as the result thereof.

The provisions of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

**History:** En. Sec. 1, Ch. 61, L. 1959.

#### **Title of Act**

An act to provide for the disqualification of district judges in criminal actions or proceedings; prescribing the grounds and procedure for disqualification; providing for assumption of jurisdiction by other

district judges in event of disqualification; and repealing all other acts and parts of acts in conflict herewith.

#### **Repealing Clause**

Section 2 of Ch. 61, Laws 1959 repealed all acts and parts of acts in conflict therewith.

### **CHAPTER 70—MODE OF TRIAL—FORMATION OF JURY AND CALENDAR OF ISSUES—POSTPONEMENT OF TRIAL**

#### **94-7001. (11928) Issue of fact defined.**

##### **References**

Cited or applied in *State v. Duncan*, 130 M 562, 305 P 2d 761, 762.

#### **94-7002. (11929) How tried.**

##### **Directed Verdict in Criminal Case**

In a prosecution for unlawfully driving a truck with an overload which is a misdemeanor, it was error for the court to instruct and direct the jury to return a verdict of guilty where the evidence as to the true weight of the truck was in

conflict as shown by two different state police scales. *State v. Baillargerion*, 126 M 310, 249 P 2d 799, 801.

##### **References**

Cited or applied in *State v. Winter*, 129 M 207, 285 P 2d 149, 159.

#### **94-7004. (11931) When presence of defendant is necessary on the trial.**

Absence of accused at return of verdict in felony case. 23 ALR 2d 456.

Impanelling or selection of jury in accused's absence. 26 ALR 2d 762.

#### **94-7005. (11932) Formation of trial jury.**

Proof as to exclusion of or discrimination against eligible class or race in respect to

jury in criminal case. 1 ALR 2d 1291.

Indoctrination by court of persons sum-

moned for jury service as infringing constitutional right of trial by jury. 2 ALR 2d 1104.

Exclusion of women from grand or trial

jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction. 9 ALR 2d 661.

**94-7008. (11935) Defendant entitled to two days to prepare for trial.**

**Continuance**

Trial judge did not abuse discretion in denying defendant's application for continuance over the term where trial was set for May 7, 1956, after defendant entered

plea of guilty on April 24, 1956. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

**References**

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

**94-7009. (11936) Notice and affidavits for postponement.**

**References**

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

**94-7010. (11937) Postponement for cause.**

**References**

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

**94-7012. (11939) Effect of failure to apply.**

**References**

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

**94-7013. (11940) Case set for trial.**

**References**

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 71—CHALLENGING THE JURY

**94-7101. (11941) Definition and division of challenges.**

**Operation and Effect**

Sections 94-7101 to 94-7128 provide the procedure for interposing a challenge to

the panel or to an individual juror. State v. Deeds, 130 M 503, 305 P 2d 321, 323.

**94-7105. (11945) Upon what founded.**

**References**

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324.

**94-7107. (11947) Exception, if sufficiency of the challenge be denied.**

**Operation and Effect**

Where defendant filed a verified, specific and detailed challenge to a jury panel and the county attorney did not deny the sufficiency of the facts alleged and the defendant also filed a timely motion for the issuance of a subpoena to the jury commissioners to appear, the trial court could

not presume the jury commissioners had performed their duty in selecting the panel; hence, it was error for the trial court to overrule defendant's motion based on the presumption that the jury commissioners had performed in accordance with the law. State v. Deeds, 130 M 503, 305 P 2d 321, 324.

**94-7108. (11948) If exception overruled, court may allow denial, etc.**

**References**

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324.

**94-7109. (11949) Denial of challenge, how made, and trial thereof.****References**

Cited or applied in *State v. Deeds*, 130 M 503, 305 P 2d 321, 324.

**94-7115. (11955) Number of peremptory challenges.****References**

Cited or applied in *State v. Porter*, 125 M 503, 242 P 2d 984, 985.

**94-7116. (11956) Challenges of state.****References**

Cited or applied in *State v. Porter*, 125 M 503, 242 P 2d 984, 985.

**94-7119. (11959) Particular causes of challenge.****References**

Cited or applied in *State v. Porter*, 125 M 503, 242 P 2d 984, 985.

**94-7120. (11960) Ground of challenge for implied bias.****References**

Cited or applied in *State v. Porter*, 125 M 503, 242 P 2d 984, 985.

**94-7122. (11962) Causes of challenge, how stated.****Challenges for Cause**

Where the state challenged three jurors for cause, and the evidence showed that one of the jurors was nearly deaf, and the other two had formed opinions, the court was correct in excusing the jurors for cause. This section is not a limitation upon the power of the court in granting challenges which are warranted. *State v. Gates*, 131 M 78, 307 P 2d 248.

**Purpose**

The purpose of this section was to require the ground of challenge to be stated before the challenger is in a position to predicate error on the court's refusal to sustain a challenge. It was not intended as a limitation upon the power of the court in granting challenges which the facts warrant. *State v. Gates*, 131 M 78, 307 P 2d 248, 249.

**94-7127. (11967) Decision of court to be entered.****Overruling Challenge**

Where court relied on answers to last two questions and on the assumption that there was a misunderstanding as to the earlier questions in examining a prospective juror for prejudice, the overruling of the challenge would not be disturbed especially where the defendant had three peremptory challenges left at the time and

exercised one to discharge such juror, and fact that defendant regarded other jurors as undesirable on which he might have exercised his challenge gave him no right to have such juror excused for bias where there was no showing that such jurors were disqualified. *State v. Allison*, 122 M 120, 199 P 2d 279, 286.

## CHAPTER 72—THE TRIAL

**94-7201. (11969) Order of trial.****Instructions****Objections**

Objection to instruction that it "is not a correct statement of the law; it is not applicable to the facts in this case" does not comply with this section. *State v. Hay*, 120 M 573, 194 P 2d 232, 237.

Objection to instruction that "it is repetitions and not a correct statement of the

law" does not comply with this section. *State v. Hay*, 120 M 573, 194 P 2d 232, 237.

Any error in giving instructions is not available to appellants on appeal where the record shows no objections made by the appellants. *State v. Holt*, 121 M 459, 194 P 2d 651, 654.

Where instructions as finally proposed to be given were not objected to by coun-



sel for defendant, the district court by statute was expressly forbidden to grant a new trial and the Supreme Court is forbidden to reverse the cause, even if error existed in such instructions. *State v. Donges*, 126 M 341, 251 P 2d 254, 255.

#### Subd. 4

##### Bill of Exceptions

Where attorney for defendant presented

bill of exceptions and prayed that the same be signed, settled and allowed, he could not be heard to complain on appeal that his bill of exceptions was not accurate. *State v. Pankow*, — M —, 333 P 2d 1017, 1020.

#### References

Cited or applied in *State v. Maciel*, 130 M 569, 305 P 2d 335, 337.

### 94-7203. (11971) Defendant presumed innocent—reasonable doubt.

#### Burden of Proof

In criminal cases the burden of proof never shifts, but the burden of the evidence may shift frequently. *State v. Moorman*, 133 M 148, 321 P 2d 236, 238.

#### Operation and Effect

In a prosecution for the crime of carrying a concealed weapon; wherein the

defendant was found guilty by a jury, it was held on appeal that in view of the uncertainty in the mind of the state's only eyewitness as compared with witnesses for the defendant, coupled with the effect of this section, the evidence was not sufficient to justify a conviction for the crime charged. *State v. Gilbert*, 125 M 104, 232 P 2d 338, 341.

### 94-7209. (11977) Rules of evidence in civil actions, etc.

#### Adverse Witness Statute

In a criminal case the state of Montana is the opposite party to the defendant, and section 93-1901-9, relating to calling the opposite party, is not applicable to a criminal proceeding. *State v. Moorman*, 133 M 148, 321 P 2d 236, 238.

#### References

Cited or applied in *State v. Storm*, 127 M 414, 265 P 2d 971, 976 (dissenting opinion); *State v. Piveral*, 127 M 427, 265 P 2d 969, 970 (dissenting opinion); *State v. Reid*, 127 M 552, 267 P 2d 986, 990.

### 94-7220. (11988) Conviction on testimony of accomplice.

#### Cross-Reference

Child under sixteen not an accomplice to commission of infamous crime against nature, sec. 94-4120.

#### Corroboration

The evidence which corroborates the testimony of an accomplice could be furnished by the defendant. It could be circumstantial. It need not extend to every fact to which the accomplice testified and need not be sufficient to justify a conviction or establish a prima facie case of guilt: it being sufficient if it tends to connect defendants with the commission of the crime. Whether it tends to do so is a question of law, while its weight—its efficacy to fortify the testimony of the accomplice and render his story trustworthy—is a matter for the consideration of the jury. *State v. Donges*, 126 M 341, 251 P 2d 254, 257.

#### Instructions

Where the defense requested instructions as to the effect of accomplice's testimony and there was evidence in the record from which the jury might have concluded that a deputy sheriff was an accomplice of the defendant, the court should have instructed the jury that if they believed the deputy sheriff was an

accomplice then they must weigh his evidence as provided by section 93-2001-1, subd. 4 and also that such evidence must be corroborated as required by this section. *State v. Porter*, 125 M 503, 242 P 2d 984, 990.

#### Insufficient Corroboration

In a prosecution for an infamous crime against nature, where the only evidence other than the testimony of the accomplice showed that the accomplice had stayed at the defendant's house over night and slept with the defendant, the corroborating evidence was not sufficient to sustain a conviction as it does nothing more than to show opportunity on the part of defendant to have committed the crime. *State v. Gangner*, 130 M 533, 305 P 2d 338.

#### Operation and Effect

In a sodomy case, court should have given the requested instructions of the defendant to the effect that if the jury finds the prosecuting witness was an accomplice, then the jury must acquit the defendant, where the only evidence connecting the defendant with the commission of the crime was the testimony of the prosecuting witness. *State v. Searle*, 125 M 467, 239 P 2d 995, 998.

### **Person Making Forged Instrument Not Accomplice of Person Passing Forged Instrument**

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument. The per-

son who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

### **94-7227. (11995) When evidence on either side is closed, etc.**

#### **Directing Jury to Acquit Defendant**

Where there is an utter failure or lack of evidence to establish the states case court may direct the jury to return a verdict for the defendant. *State v. Widdicombe*, 130 M 325, 301 P 2d 1116, 1118.

#### **Operation and Effect**

This section is applicable only in cases in which the trial court deems the evi-

dence, although tending to prove every element constituting the crime charged, insufficient in weight to warrant a conviction. *State v. Peschon*, 131 M 330, 310 P 2d 591, 595.

#### **References**

Cited or applied in *State v. Perez*, 126 M 15, 243 P 2d 309, 311; *State v. Allen*, 128 M 306, 275 P 2d 200, 205.

### **94-7228. (11996) View of place of offense or property.**

#### **Condition of Premises**

The fact that the premises to be viewed had accumulated dirt which had been hastily swept away, that doors had been replaced and the view was bleak and morbid furnished no ground for interfering with an order permitting a view of the premises. *State v. Allison*, 122 M 120, 199 P 2d 279, 292.

#### **Discretion of Court**

The matter of permitting the jury to view the premises rests entirely in the discretion of the trial court which will not be interfered with except in case of manifest abuse. *State v. Allison*, 122 M 120, 199 P 2d 279, 292.

### **94-7230. (11998) Jurors, separation of, during trial.**

Separation of jury in criminal case. 21 ALR 2d 1088.

### **94-7236. (12004) In all other cases court to decide questions of law.**

#### **References**

Cited or applied in *State v. Strobel*, 130 M 442, 304 P 2d 606, 613.

### **94-7239. (12007) If county attorney fails to attend, court may appoint.**

#### **References**

Cited or applied in *State v. Cockrell*, 131 M 254, 309 P 2d 316, 319.

## **CHAPTER 74—THE VERDICT**

### **94-7407. (12023) Jury may find upon charge of previous conviction.**

#### **Plea of Guilty**

This statute contemplated that the answer to charge or allegation of prior conviction should be an admission or denial,

but a plea of guilty is an admission of the charge. *State ex rel. Treat v. District Court*, 122 M 249, 200 P 2d 248, 249.

## **CHAPTER 75—BILLS OF EXCEPTION**

### **94-7504. (12040) Exceptions, how settled by supreme court.**

#### **References**

Cited or applied in *State ex rel. Toner*

*v. District Court*, 127 M 603, 256 P 2d 1095.

**94-7507. (12044) Settlement of bills of exceptions.****Operation and Effect**

Since the responsibility for the preparation of the bill of exceptions lies with the appellant, he cannot be heard to complain on appeal that his own bill of exceptions is not accurate. *State v. Pankow*, — M —, 333 P 2d 1017, 1020.

**Provisions Mandatory**

Compliance with this section is mandatory. *State v. Kuntz*, 130 M 126, 295 P 2d 707, 708.

Where the time for presenting the bill of exceptions to the judge has expired the judge has lost jurisdiction after that to

settle any bill of exceptions for the defendant. Such jurisdiction, once lost, could not be reinvested in the trial judge even by the stipulation of counsel. *State v. Kuntz*, 130 M 126, 295 P 2d 707, 708.

**Waiver of Notice**

Where the county attorney made no objection to the want of notice in the district court and actually stipulated that he had no amendments to offer and that the bill of exceptions as proposed was correct, then this constituted a waiver of formal notice. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1112.

**94-7508. (12045) Record on appeal in criminal cases.****Dismissal of Appeal**

The state's motion to dismiss an appeal will be granted where the defendant, although filing a notice of appeal, did not have settled or allowed a bill of exceptions, and omitted to file a transcript or

briefs in the Supreme Court when no extension of time has been granted and no showing that the appellant's failure and omission has been without laches on his part. *State v. McDonald*, 125 M 201, 232 P 2d 997.

## CHAPTER 76—NEW TRIALS

**94-7602. (12047) Its effect.****Operation and Effect**

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. *State v. Hale*, 129 M 449, 291 P 2d 229, 230. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

**94-7603. (12048) Grounds for granting new trial.****Subd. 4****Operation and Effect**

In a prosecution for statutory rape, there was no error where the jury reached a verdict of guilty, and then, in deciding on punishment, each member set down his proposed amount in years, the total was divided by twelve to get an average, and then the term of the punishment was fixed after further discussion. *State v. Moorman*, 133 M 148, 321 P 2d 236, 242.

A quotient verdict is not a lot verdict. *State v. Moorman*, 133 M 148, 321 P 2d 236, 243.

jurisdiction of the case, except that if a motion for a new trial is then pending the district court retains jurisdiction thereof, with power to rule thereon. *State v. Nicks*, 131 M 567, 312 P 2d 519, 520.

(Id.) Where defendant had perfected an appeal to the Supreme Court, and then discovered new evidence, the Supreme Court had no jurisdiction to grant a new trial, but upon defendant's prima facie showing of matters sufficient to warrant consideration, the court would instruct the district court to entertain defendant's motion for a new trial, and would stay further proceedings pending such motion. *State v. Nicks*, 131 M 567, 312 P 2d 519, 521.

**Subd. 7****Motion for New Trial after Appeal Perfected**

Once an appeal has been perfected to the Supreme Court the district court loses

**References**

Cited or applied in *State v. Winter*, 129 M 207, 285 P 2d 149, 159; *State v. Moorman*, 133 M 148, 321 P 2d 236, 243.

**94-7604. (12049) Applications for, how made.****References**

Cited or applied in *State v. Nicks*, 131 M 567, 312 P 2d 519, 520.



## CHAPTER 78—JUDGMENT—SUSPENSION OF SENTENCE AND PROBATION

Section 94-7821. Court may suspend sentence, when.

94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification.

94-7824. Effect of suspended sentence.

94-7831. Investigation.

94-7832. Sentence.

94-7833. Information from courts.

94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon.

94-7835. Court to determine type of confinement.

94-7836. Continuation of work.

94-7837. Disposition of prisoner's earnings.

94-7838. Reduction of sentence.

94-7839. Violation.

94-7840. Work arrangement in another county.

94-7841. Persons guilty of contempt.

**94-7821. (12078) Court may suspend sentence, when.** In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where the court or magistrate has power to sentence such defendant to any penal or other institution in this state, and it appears that the defendant has never before been imprisoned for crime either in this state or elsewhere (but detention in an institution for juvenile delinquents shall not be considered imprisonment), and where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by law, said court may suspend the execution of the sentence and place the defendant on probation in the manner hereinafter provided. Nothing in this act contained shall in any manner affect the laws providing the method of dealing with the juvenile delinquents. Any judge, who has suspended a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence to revoke such suspension and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with his court as is authorized by him or his successor. Prior to such revocation of the order of such suspension, the person affected shall be given a hearing before said judge.

**History:** En. Sec. 1, Ch. 21, L. 1913;  
re-en. Sec. 12078, R. C. M. 1921; amd.  
Sec. 1, Ch. 184, L. 1937; amd. Sec. 1, Ch.  
194, L. 1955.

#### Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners."

**94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification.** When any judge has suspended a sentence of imprisonment as provided in section 94-7821, and has not ordered the prisoner placed under the jurisdiction of the state board of pardons, but has retained jurisdiction with the court, the clerk of said court shall nevertheless mail a full copy of the judgment of the court and the order suspending the sentence and certify the same to the state board of pardons, and bureau of identification at the state prison, or if the defendant would have been confined to an institution other than the state

prison, then a copy shall be sent to the institution to which said court would have committed the defendant but for the suspending of the sentence.

**History:** En. Sec. 1, Ch. 40, L. 1939; board of pardons" for "state board of amd. Sec. 2, Ch. 194, L. 1955. prison commissioners."

#### **Amendment**

The 1955 amendment substituted "state

Propriety and effect of court's indication to jury resulting in recommendation of suspended sentence. 8 ALR 2d 1001.

### **94-7823. (12079) Repealed.**

#### **Repeal**

This section (Sec. 2, Ch. 21, L. 1913; amd. Sec. 1, Ch. 53, L. 1935; amd. Sec. 1, Ch. 65, L. 1953), relating to persons not

entitled to probation, was repealed by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

**94-7824. (12080) Effect of suspended sentence.** Whenever a sentence to any penal or other institution in this state has been imposed, but the execution thereof has been suspended and the defendant placed on probation, the effect of such order of probation shall be to place said defendant under the control and management of the state board of pardons and he shall be subject to the provisions of the probation, parole and executive clemency act.

**History:** En. Sec. 3, Ch. 21, L. 1913; re-en. Sec. 12080, R. C. M. 1921; amd. Sec. 3, Ch. 194, L. 1955.

to persons paroled from said institutions after a period of imprisonment therein."

#### **Amendment**

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners" and "subject to the provisions of the probation, parole and executive clemency act" for "subject to the same rules and regulations as applied

#### **Repealing Clause**

Section 4 of Ch. 194, Laws 1955 read "That sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith, be, and the same are hereby repealed."

### **94-7825 to 94-7830. (12081 to 12086) Repealed.**

#### **Repeal**

These sections (Secs. 4 to 9, Ch. 21, L. 1913), relating to probation, were repealed

by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

**94-7831. Investigation.** No defendant convicted of a crime, the punishment for which may include imprisonment in the state prison, shall be sentenced or his case otherwise disposed of, until a written report of investigation by a probation and parole officer shall have been presented to, and considered by, the court, unless the court deems such report unnecessary. The court may, in its discretion, order a pre-sentence investigation for a defendant convicted of any lesser crime or offense. Whenever an investigation is required, the probation and parole officers shall promptly inquire into the circumstances of the offense, the attitude of the complainant, the social history, criminal record, and the present conditions of the defendant and his immediate family. All local and state police agencies shall furnish to the probation and parole officer such criminal records as the probation and parole officer may request. Where, in the opinion of the court or the investigating authority, it is found desirable, such investigation shall include a physical and mental examination of the defendant. If a defendant is committed to an institution, the investigating agency shall send a report of such investigation to the institution at the time of commitment.

**History:** En. Sec. 5, Ch. 194, L. 1955.

**Title of Act**

An act to amend sections 94-7821, 94-7822, and 94-7824 of the Revised Codes of Montana, 1947, by substituting the words "Board of Pardons" for "Board of Prison Commissioners" and referring to the provisions of the Probation, Parole and Executive Clemency Act; providing for investigation by probation and parole officers prior to sentencing an individual

convicted of a crime, if deemed necessary by the court; providing the sentences courts are authorized by law to impose; requiring courts to transmit to board of pardons certain statistical data; repealing sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; providing a saving clause; and providing an effective date clause.

**94-7832. Sentence.** Whenever any person has been found guilty of a crime or offense upon verdict or plea, the court may adjudge as follows:

(1) Release the defendant on probation, (2) Suspend the imposition or execution of sentence, (3) Impose a fine as provided by law for the offense, (4) Impose any combination of (1), (2), (3), or, (5) Commit the defendant to a correctional institution with or without a fine as provided by law for the offense.

**History:** En. Sec. 6, Ch. 194, L. 1955.

**94-7833. Information from courts.** It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

**History:** En. Sec. 7, Ch. 194, L. 1955.

**94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon.** This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon, as the case may be, provided that no person convicted and sentenced before the effective date shall have his rights and earned good time reduced by the application of this act.

**History:** En. Sec. 9, Ch. 194, L. 1955.

**Separability Clause**

Section 8 of Ch. 194, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of com-

petent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

**94-7835. Court to determine type of confinement.** A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county, and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed.

**History:** En. Sec. 1, Ch. 249, L. 1959.

**Title of Act**

An act authorizing the court to sentence a convicted misdemeanant to confinement with parole during the periods of the pris-

oner's employment; specifying the disposition to be made of the prisoner's earnings; setting forth conditions for diminution of the misdemeanant's sentence; declaring the consequences of the prisoner's violation of parole conditions; extend-



ing the provisions of this act to jail commitments for adjudicated contempt of a court of record; containing a savings

clause, effective date and repealing all acts and parts of acts in conflict.

**94-7836. Continuation of work.** Upon the issuance of such an order under this act, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible; provided, however, that said prisoner shall be confined in the county jail during the hours when he is not employed.

**History:** En. Sec. 2, Ch. 249, L. 1959.

**94-7837. Disposition of prisoner's earnings.** The earnings of the prisoner shall be collected by the sheriff. From such earnings, the sheriff shall pay the prisoner's board and personal expenses, both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any, and any balance shall be retained until his discharge.

**History:** En. Sec. 3, Ch. 249, L. 1959.

**94-7838. Reduction of sentence.** The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term, if, in the opinion of the court, the prisoner's conduct, diligence and general attitude merit such diminution.

**History:** En. Sec. 4, Ch. 249, L. 1959.

**94-7839. Violation.** In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court; the court may then require that the balance of his sentence be spent in full confinement and, further, the court may cancel any diminution of sentence granted under this act.

**History:** En. Sec. 5, Ch. 249, L. 1959.

**94-7840. Work arrangement in another county.** The court may, by order, authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana, to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county; provided, however, when such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person, and shall dispose of said moneys as provided by section 3 [94-7837] of this act.

**History:** En. Sec. 6, Ch. 249, L. 1959.

**94-7841. Persons guilty of contempt.** The provisions of this act shall extend to a person committed to the county jail by a court of record upon an adjudication of contempt of court.

**History:** En. Sec. 7, Ch. 249, L. 1959.

remaining sections of this act, which can be given effect."

#### **Savings Clause**

Section 8 of Ch. 249, Laws 1959 read "If any competent court shall find any section or sections of this act to be unconstitutional or otherwise invalid, such finding shall not affect the validity of all

#### **Repealing Clause**

Section 9 of Ch. 249, Laws 1959 repealed all acts or parts of acts in conflict therewith.

**Effective Date**

Section 10 of Ch. 249, Laws 1959 provided the act should be in effect from and

after the date of its passage and approval.  
Approved March 12, 1959.

**CHAPTER 80—THE EXECUTION**

Section 94-8019. Western interstate corrections compact—contents.

94-8020. Commitment or transfer of inmate to institution outside of state.

94-8021. Effectuation of purposes of compact.

94-8022. Hearings requested by other states—power of board of pardons and paroles and board of prison commissioners to hold.

94-8023. Governor—power to enter into contracts.

**94-8009. (12095) Insanity of defendant, how determined.****References**

Cited in *Sollesbee v. Balkom*, 339 U S

29, 94 L Ed 615, 70 S Ct 466 (dissenting opinion).

**94-8019. Western interstate corrections compact—contents.** The western interstate corrections compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

1. Purpose and policy. The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

2. Definitions. As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the Territory of Hawaii, or, subject to the limitation contained in article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

3. Contracts. (a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative

or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

4. Procedures and rights. (a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be



required pursuant to the terms of any contract entered into under the terms of article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

5. Acts not reviewable in receiving state; extradition. (a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

6. Federal aid. Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

7. Entry into force. This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

8. Withdrawal and termination. This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other

party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

9. Other arrangements unaffected. Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

10. Construction and severability. The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**History:** En. Sec. 1, Ch. 236, L. 1959.

#### **Title of Act**

An act adopting the western interstate corrections compact for the development and execution of a program for the reciprocal confinement, treatment and rehabilitation of certain classes of convicted felons in institutions of participating states; di-

recting cooperation of state agencies in the program; authorizing the holding of hearings requested by agencies of participating states; empowering the governor to enter into contracts under the compact with the approval of the board of examiners; and repealing all acts and parts of acts in conflict herewith; and providing an effective date.

**94-8020. Commitment or transfer of inmate to institution outside of state.** Any court or the board of prison commissioners having power to commit or transfer an inmate (as defined in article II (d) of the western interstate corrections compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to article III of the western interstate corrections compact.

**History:** En. Sec. 2, Ch. 236, L. 1959.

**94-8021. Effectuation of purposes of compact.** The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact.

**History:** En. Sec. 3, Ch. 236, L. 1959.



**94-8022. Hearings requested by other states—power of board of pardons and paroles and board of prison commissioners to hold.** The board of pardons and paroles and the board of prison commissioners are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to article IV (f) of the western interstate corrections compact.

**History:** En. Sec. 4, Ch. 236, L. 1959.

**94-8023. Governor—power to enter into contracts.** The governor is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the western interstate corrections compact pursuant to article III thereof. No such contract shall be of any force or effect until approved by the board of examiners.

**History:** En. Sec. 5, Ch. 236, L. 1959.

#### **Separability Clause**

Section 6 of Ch. 236, Laws 1959 read "The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or cir-

cumstance shall, with respect to all severable matters, not be affected thereby."

#### **Repealing Clause**

Section 7 of Ch. 236, Laws 1959 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 8 of Ch. 236, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

### **CHAPTER 81—APPEALS TO SUPREME COURT—WHEN ALLOWED —HOW TAKEN—EFFECT THEREOF**

#### **94-8101. (12105) Defendant may appeal from any judgment.**

##### **Appeals from Justice Courts**

The Supreme Court does not have appellate jurisdiction to review the judgments or orders of the justice courts of this state. State ex rel. Estes v. Justice Court of Jefferson County, 129 M 136, 284 P 2d 249, 250.

##### **References**

Cited or applied in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

#### **94-8103. (12107) Appeal, when may be taken by the defendant.**

##### **Order Denying Petition for Writ of Prohibition**

Order of district court denying petition of defendant for writ of prohibition to restrain justice court from further proceedings in criminal action was not a judgment and could not be appealed. State ex

rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542, 543.

##### **References**

Cited in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437; State v. Zumwalt, 129 M 529, 291 P 2d 257, 259.

#### **94-8104. (12108) In what cases by the state.**

##### **Appeals Authorized**

An appeal by the state from the order of the court directing the jury to find for the defendant is expressly provided for in this section. State v. Rother, 130 M 357, 303 P 2d 393, 394.

##### **Order Sustaining Demurrer to Complaint**

An order sustaining a demurrer to a complaint does not fall within any of the

provisions of this section and therefore is not an appealable order. State v. Slater, 130 M 630, 302 P 2d 470.

##### **Right to Appeal Limited by This Section**

Where defendant was convicted in justice of peace court and appealed to district court in which court the action was dismissed on defendant's motion, state had

no right of appeal under this section. *State v. McCluskey*, 125 M 20, 229 P 2d 169.

A district court's order of dismissal of the complaint following an appeal from a conviction in a justice of the peace court does not fail within the provisions of this section and therefore is not an

appealable order. *State v. Becko*, 125 M 76, 230 P 2d 768, 769.

#### References

Cited or applied in *State v. Perez*, 126 M 15, 243 P 2d 309, 310; *State v. Widdicombe*, 130 M 325, 301 P 2d 1116, 1117.

### 94-8105. (12109) Appeals, time limitation.

#### Operation and Effect

Where person convicted in district court petitioned Supreme Court for writ of mandate to compel district to furnish "copy of trial and court record transcript" for purpose of appeal in forma pauperis, writ was denied where no timely application

had been filed in accordance with section 94-8106. *State ex rel. Treat v. District Court*, 124 M 234, 221 P 2d 436, 437.

#### References

Cited or applied in *State v. Zumwalt*, 129 M 529, 291 P 2d 257, 259; *State v. Kuntz*, 130 M 126, 295 P 2d 707, 708.

### 94-8106. (12110) Appeal, how taken.

#### Oral Request for Appeal Ineffective

Oral request of intention to appeal made orally in open court fails to conform to this section and is wholly ineffectual to

give the Supreme Court jurisdiction. *State ex rel. Treat v. District Court*, 124 M 234, 221 P 2d 436, 437.

### 94-8113. (12117) Appeal, when tried.

#### In General

Where appellant filed his transcript, and subsequently received seven separate orders for extensions of time to file his brief,

court would refuse appellant's application to vacate the hearing of the appeal. *State v. Cockrell*, 130 M 552, 305 P 2d 337, 338.

## CHAPTER 82—DISMISSING APPEALS FOR IRREGULARITY—ARGUMENT ON APPEAL—JUDGMENT ON APPEAL

### 94-8207. (12125) Judgment without regard to technical errors.

#### Erroneous Instruction

Erroneous instructions are not cause for reversal in the absence of any prejudice. *State v. Hay*, 120 M 573, 194 P 2d 232, 236.

to show prejudice. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

#### Transcript of Evidence—Necessity.

#### Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant

In order to give effect to this section to determine whether the erroneous instructions were merely technical errors, or affected the substantial rights of the accused, it is necessary that the supreme court have before it a transcript of the evidence. *State v. Hay*, 120 M 573, 194 P 2d 232, 237.

### 94-8210. (12127) May reverse, affirm or modify the judgment and order, etc.

#### Operation and Effect

Where Supreme Court reversed conviction of defendant and remanded cause to district court with directions that if defendant have a new trial the district court should first make inquiry into the defendant's insanity but if the prosecution is dismissed that the district court deliver the defendant to the court of another county which has continuing jurisdiction over the defendant so that the latter court may inquire into his mental condition and make such disposition of the defendant as

is required by law; and thereafter the prosecution was dismissed, the trial court then was compelled to deliver the defendant to the other district court and county attorney could not file a new information. The trial court was bound to follow the mandate of the Supreme Court as found in the remittitur and mandamus will lie to require that the district court follow such mandate. *State ex rel. Kitchens v. District Court*, 130 M 57, 294 P 2d 907. (Dissenting opinion, 130 M 57, 294 P 2d 907, 911.)

**94-8215. (12132) Jurisdiction ceases after judgment remitted.****Operation and Effect**

Where Supreme Court reversed conviction and the remittitur went down in due course and was filed with the lower court, the Supreme Court at that time lost jurisdiction in the case. Specifically it lost any jurisdiction it may have had theretofore

to alter in any particular either the opinion or the mandate which followed upon that opinion, certainly unless the remittitur were first recalled. *State ex rel. Kitchens v. District Court*, 130 M 57, 294 P 2d 907, 908.

CHAPTER 83—IN WHAT CASES DEFENDANT MAY BE  
ADMITTED TO BAIL

**94-8301. (12133) Admission to bail defined.**

Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties. 23 ALR 2d 803.

Failure to appear, and the like, resulting in forfeiture or conditional forfeiture

of bail, as affecting right to second admission to bail in same noncapital criminal case. 29 ALR 2d 945.

**94-8303. (12135) Offense not bailable.****Discretion of Trial Court**

Bail is a matter within the discretion of the trial court and its ruling will not be disturbed unless a clear abuse of discretion appears. *State v. London*, 131 M 410, 310 P 2d 571, 580.

Denial of bail could not be claimed as showing prejudice by the trial judge for such is a mere preliminary matter and has nothing to do with the trial on the merits. *State v. London*, 131 M 410, 310 P 2d 571, 580.

CHAPTER 85—BAIL ON INDICTMENT OR INFORMATION  
BEFORE CONVICTION

Section 94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate.

94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash.

94-8510. Certification of names of sureties—withdrawal by surety company.

**94-8501. (12145) When the offense is not capital.**

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 443.

**94-8506. (12150) Sections applicable to qualifications, etc.****Amount of Bail**

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount.

*State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

**94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate.** (A) Any domestic or foreign surety company which has qualified to transact surety business in



this state may, in any year, become surety in an amount not to exceed one hundred dollars (\$100.00) with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state, by filing with the commissioner of insurance an undertaking thus to become surety.

(B) Such undertaking shall be in form to be prescribed by the commissioner and shall state the following:

(1) The name and address of the automobile club or clubs, automobile association, or insurance company or companies, or associations with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed one hundred dollars (\$100.00) of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(C) The term, guaranteed arrest bond certificate, means any printed card or other certificate issued by an automobile club, association or insurance company, to any of its members or insureds, which said card or certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company, or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana, guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed one hundred dollars (\$100.00).

**History:** En. Sec. 1, Ch. 39, L. 1957.

#### **Title of Act**

An act authorizing qualified surety companies to become surety with respect to guaranteed arrest bond certificates of automobile clubs and associations and insurance companies authorized to write auto-

mobile liability insurance within the state of Montana, and requiring the acceptance of such certificates in lieu of cash or property bail in the event of certain violations of motor vehicle laws; providing that all acts and parts of acts in conflict herewith are repealed.

**94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash.** Any guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state, as provided in section 1 [94-8508] hereof, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed one hundred dollars (\$100.00), as a bail bond to guarantee the appearance of such person, in any court, including municipal courts, in this state, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state

(except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases as provided by law, and that any such guaranteed arrest bond certificate posted as bail bond in any municipal court in this state shall be subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

**History:** En. Sec. 2, Ch. 39, L. 1957.

**94-8510. Certification of names of sureties—withdrawal by surety company.** The commissioner of insurance shall certify to each justice of the peace, police magistrate and district judge the names of surety companies who have become sureties with respect to guaranteed arrest bond certificates, and shall likewise immediately notify such official upon the withdrawal of such company as surety. No such withdrawal by any company shall be effective for thirty (30) days after the filing thereof with the state insurance commissioner.

**History:** En. Sec. 3, Ch. 39, L. 1957.

**Repealing Clause**

Section 4 of Ch. 39, Laws 1957 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 88—WHO MAY BE WITNESSES IN CRIMINAL ACTIONS**

**94-8802. (12176) Competency of husband and wife as witnesses.**

**Operation and Effect**

It was error to permit wife to testify against husband in trial for assault by unlawfully threatening another by pointing

a loaded revolver in violation of subd. 4 of section 94-602 where no offense against the wife was charged. State v. Storm, 124 M 102, 220 P 2d 674, 675.

**94-8803. (12177) When the defendant is not a competent witness, etc.**

**References**

Cited or applied in State v. Dillon, 125

M 24, 230 P 2d 764, 767; State v. London, 131 M 410, 310 P 2d 571, 585.

**CHAPTER 89—COMPELLING ATTENDANCE OF WITNESSES—SUBPOENAS**

**94-8904. (4945) Criminal actions not more than six to be subpoenaed, etc.**

**Operation and Effect**

This statute is to control the expenses of the county and is a limitation upon the clerk of the court and not upon the judge. Where the court allows more than six

witnesses to testify for the state the defendant is not prejudiced by the absence of an express order made by the court. State v. Cockrell, 131 M 254, 309 P 2d 316, 321.

**CHAPTER 90—WITNESSES FROM WITHOUT STATE—HOW SECURED IN CRIMINAL PROCEEDINGS**

Section 94-9003. Witness from another state summoned to testify in this state.

**94-9003. Witness from another state summoned to testify in this state.**

(1) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal

prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation, which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate will be presented to a judge of a court of record in the county in which the witness is found.

(2) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, such judge may direct that such witness be forthwith brought before him; and the judge being satisfied of the desirability of such custody and delivery, for which such determination said certificate shall be prima facie proof, may order that said witness be forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient authority to such officer to take such witness into custody and hold him unless and until he may be released by bail, recognizance, or order of the judge issuing the certificate.

(3) If the witness is summoned to attend and testify in this state, he shall be tendered the sum of ten cents (10¢) a mile for each mile and five dollars (\$5.00) for each day that he is required to travel and attend as a witness, provided further that in those cases in which the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount or amounts in excess of the amount hereinbefore in this paragraph provided, then said witness may be tendered said amount or amounts so required by said state to be tendered though the said amount or amounts so required to be tendered are in excess of the said amounts in this paragraph provided for. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 3, Ch. 188, L. 1937; all acts and parts of acts in conflict there-  
amd. Sec. 1, Ch. 117, L. 1949. with.

#### Amendment

The 1949 amendment added the proviso to the first sentence of paragraph (3).

#### Repealing Clause

Section 2 of Ch. 117, Laws 1949 repealed

#### Effective Date

Section 3 of Ch. 117, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

## CHAPTER 93—PROCEEDINGS ON INQUIRY AS TO SANITY OF A DEFENDANT

### 94-9301. (12213) Insane person cannot be tried or punished.

#### Declaratory of Common Law

This statute is declaratory of the common law as it has existed at least since Blackstone's day. Comparable or similar statutes have been enacted in all but four

states of the Union. In these four, it seems the common law without the aid of statute remains in force. *State v. Kitchens*, 129 M 331, 286 P 2d 1079, 1083.



**94-9302. (12214) Doubts as to sanity of defendant, how determined, etc.****Construction**

A doubt within the meaning of this section may come from matters which are brought to the attention of the trial judge wholly beyond the common-law record or which although occurring at the trial do not appear in the record, or which although shown in the record are not admissible as evidence bearing upon any issue before the trial court on the merits. The sources of that doubt need not be evidence. It is enough that the doubt comprehended by the statute arises from credible and trustworthy information brought to the attention of the trial court from any source at all. *State v. Kitchens*, 129 M 331, 286 P 2d 1079, 1083.

The question whether such a doubt is raised in any given case addresses itself directly to the sound judicial discretion of the trial court. But like any other matter thus committed to the discretion of a court or its judge this discretion may not be exercised arbitrarily. Its abuse will be reviewed on appeal, and where an abuse

does appear the reviewing court will say as a matter of law a doubt did arise which commanded action, and which therefore works a reversal for the error of the judge below in failing to heed its command. *State v. Kitchens*, 129 M 331, 286 P 2d 1079, 1083.

The weight of successive adjudications by four different courts and judges, in other proceedings, that the defendant was insane, were sufficient as a matter of law to raise the doubt required by this section. The testimony of a witness that the defendant was sane does not alter the case, for at this stage of the proceedings the court is only concerned with the preliminary question whether there is reason to doubt the defendant's sanity. *State v. Kitchens*, 129 M 331, 286 P 2d 1079, 1085.

**References**

Cited or applied in *State ex rel. Kitchens v. District Court*, 130 M 57, 294 P 2d 907, 908.

**94-9303. (12215) Trial of the question of insanity—charge of court.**

Presumption of continuing insanity as applied to accused in criminal case. 27 ALR 2d 121.

## CHAPTER 95—DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION OR OTHER REASONS

**94-9501. (12223) When action may be dismissed.****Dismissal on Other Grounds**

Where district court dismissed information on grounds other than that provided by this section and record failed to show whether this ground was urged at the hearing in the district court or any ruling thereon, the case was reversed and the cause remanded to the district court for further proceedings not inconsistent with the opinion of the Supreme Court. *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1025; *State v. McRae*, 124 M 238, 220 P 2d 1025, 1027.

**Interruption of Period**

From the six months mentioned in subdivision 2 of this section must be excluded the time elapsing between the date the demurrer to the information was erroneously sustained and the date of the remittitur of the Supreme Court reversing the decision. *State v. Israel*, 124 M 152, 220 P 2d 1003, 1013.

**Operation and Effect**

Whether or not motion to dismiss information under this section because of delay in trial should be granted or denied depends on whether or not "good cause" is shown for delay. *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1025; *State v. McRae*, 124 M 238, 220 P 2d 1025, 1027.

In a prosecution for a misdemeanor, where the complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not one under this section which would be a bar to the prosecution under section 94-9507. *State ex rel. Borberg v. District Court*, 125 M 481, 240 P 2d 854, 859, 860, 861.

**References**

Cited or applied in *State v. Porter*, 130 M 299, 300 P 2d 952, 953.

**94-9502. (12224) Case may be continued.****References**

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240

P 2d 854, 861; State v. Porter, 130 M 299, 300 P 2d 952, 953.

**94-9505. (12227) Dismissed on motion of court or application, etc.****References**

Cited or applied in State v. Storm, 127

M 414, 265 P 2d 971, 973; State v. Piveral, 127 M 427, 265 P 2d 969, 970.

**94-9507. (12229) Dismissal a bar in misdemeanor, but not in felony.****Bar—How Raised**

The defense of the bar arising under this section may properly be raised by a plea of not guilty, and all matters in proof thereof are admissible under the plea of not guilty by virtue of section 94-6805. State v. Porter, 130 M 299, 300 P 2d 952, 954.

upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not a bar to the prosecution for the misdemeanor. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859 to 861.

**Operation and Effect**

This section applies only to orders of dismissal as provided in section 94-9501. Therefore, in a justice of the peace proceeding where a complaint is dismissed

**References**

Cited or applied in State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248, 250.

**CHAPTER 98—PROBATION, PAROLE AND CLEMENCY**

Section 94-9821. Act, how cited.

94-9822. Board of pardons—organization.

94-9823. Definitions.

94-9824. Seal, orders, records, annual report.

94-9825. Director and employees—salaries to be paid monthly—approval and auditing.

94-9826. Expenses to be paid.

94-9827. Legal advisor of the board.

94-9828. Duties of the director.

94-9829. Duties of probation and parole officers.

94-9830. Conditions of probation or suspension of sentence.

94-9831. Arrest—subsequent disposition.

94-9832. Parole authority and procedure.

94-9833. Conditional release.

94-9834. Information from prison officials.

94-9835. Persons may be heard—counsel.

94-9836. Subpoenas.

94-9837. Rules.

94-9838. Return of parole violator.

94-9839. Service of term for additional crime.

94-9840. Discharge of prisoner, parolee or conditional releasee.

94-9841. Cases of executive clemency.

94-9842. Notice of hearing applications for executive clemency.

94-9843. Publication of order.

94-9844. Proof of publication.

94-9845. Record of meeting, what to contain.

94-9846. When publication not necessary.

94-9847. Decision to be made.

94-9848. Governor may respite.

94-9849. Governor to report to legislative assembly.

94-9850. Cases of juveniles excluded.

94-9851. Effective date—application to persons presently on parole or probation or eligible for.

**94-9801 to 94-9820. (12247 to 12266) Repealed.****Repeal**

These sections (Secs. 2630 to 2646, Pen. C. 1895; Secs. 3 to 6, 8 to 12, p. 192, L. 1891; and Secs. 1 to 3, Ch. 95, L. 1907),

relating to pardons and paroles, were repealed by Sec. 31, Ch. 153, Laws 1955. For new provisions, see secs. 94-9821 to 94-9851.

**94-9821. Act, how cited.** This act shall be known and may be cited as the Probation, Parole and Executive Clemency Act.

**History:** En. Sec. 1, Ch. 153, L. 1955.

**Title of Act**

An act creating a board of pardons and prescribing the appointment and composition thereof, with power and duty to grant paroles, within restrictions, to supervise probations and suspended sentences, to recommend after duly noticed public hearing that the governor remit fines and forfeitures, grant pardons, absolute or conditional; grant commutations of punishments after conviction and judgment for offenses committed against the criminal laws of this state; providing for a director and a staff to administer the provisions of this act, and defining their duties; requiring records of board proceedings; providing for arrest of parolees or probationers

upon violation of conditions of release; providing penalties for parole or probation violators; defining rights of attorneys to hearing before the board; providing the board with power to subpoena witnesses, and make rules and regulations under the provisions of this act; defining governor's power to respite; requiring governor to report acts of executive clemency to the legislative assembly; excluding juveniles; providing a saving clause; repealing sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; and providing an effective date clause.

**94-9822. Board of pardons—organization.** There is hereby created a state board of pardons, hereinafter referred to as the "board," consisting of three (3) members who shall be appointed by the governor with the advice and consent of the senate. The board shall administer the executive clemency, probation and parole system, and shall endeavor to secure the effective application and improvement of such system and the laws upon which it is based. The members of the board shall serve on a per diem basis and shall be paid at the rate of fifteen dollars (\$15.00) per day of service, plus actual and necessary expenses, and shall meet at least once each month at the state prison. The members of the board shall serve for terms of six (6) years, and until their successors are duly appointed and qualified, provided, however, that two (2) of these first appointed after this act takes effect, shall serve for terms of two (2) and four (4) years, respectively. The governor shall appoint the members of the board and call a meeting thereof within thirty (30) days of the effective date thereof. The board shall immediately thereafter set up the system herein provided for, and make the necessary appointments of its director, and other employees. Suitable quarters, supplies and equipment shall be provided. The principal office of the board shall be in Deer Lodge, Montana. A vacancy occurring before the expiration of any member's term of office shall be filled in the same manner for the unexpired portion of said term. The governor may at any time, after notice and hearing, remove any member for neglect of duty, malfeasance, misfeasance or nonfeasance in office.

**History:** En. Sec. 2, Ch. 153, L. 1955.

**94-9823. Definitions.** When used in this act, unless the context otherwise requires:

- (a) "Probation" is the release by the court without imprisonment



except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.

(b) "Parole" is the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(c) "Executive clemency" refers to the powers of the governor as provided by section 9 of Article VII of the Constitution of the state of Montana.

History: En. Sec. 3, Ch. 153, L. 1955.

**94-9824. Seal, orders, records, annual report.** The board shall adopt an official seal of which the courts shall take judicial notice. A majority of the board shall constitute a quorum. Decision of the board may be by majority vote. The orders of the board shall not be reviewable except as to compliance of terms of this act. The board shall keep a record of its acts and decisions available to the public, providing, however, that all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by any member or employee of the board, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge; provided, however, that the board or a court may in its discretion, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney. At the close of each fiscal year the board shall submit to the governor, to the board of prison commissioners and to the legislature, a report with statistical data of its work, including research studies which it may make of probation, sentencing, parole or related functions, and a compilation and analysis of dispositions by criminal courts throughout the state.

History: En. Sec. 4, Ch. 153, L. 1955.

**94-9825. Director and employees—salaries to be paid monthly—approval and auditing.** The board shall appoint a state director of probation and parole, hereinafter referred to as the "director" who shall appoint, with the approval of the board, an assistant director, probation and parole officers and other employees required to administer the provisions of this act. The director shall receive an annual salary of seven thousand dollars (\$7,000.00) per annum payable monthly. All other officers and employees of the board shall receive such compensation for their services as may be fixed by the board. All officers and employees of the board shall hold office at the pleasure of the board and shall perform such duties as are imposed on them by law or by the board.

The salaries of all officers and employees of the board shall be paid monthly after such salaries have been approved by the board upon claims therefore, to be audited and approved by the state board of examiners.

History: En. Sec. 5, Ch. 153, L. 1955; of the director from \$6,000 to \$7,000 per annum.  
amd. Sec. 1, Ch. 122, L. 1957.

**Amendment**

The 1957 amendment raised the salary

**Repealing Clause**

Section 2 of Ch. 122, Laws 1957 repealed

all acts and parts of acts in conflict therewith.

the act should be in effect from and after its passage and approval. Approved March 5, 1957.

**Effective Date**

Section 3 of Ch. 122, Laws 1957 provided

**94-9826. Expenses to be paid.** All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees, incurred while on business of the board either within or without the state, shall, unless otherwise provided in this act, be paid from funds appropriated, after being approved by the board upon claims therefor, to be audited and approved by the state board of examiners.

**History:** En. Sec. 6, Ch. 153, L. 1955.

**94-9827. Legal advisor of the board.** The board may appoint any qualified attorney or the attorney general to act as its legal advisor and represent it in all proceedings whenever so requested by the board.

**History:** En. Sec. 7, Ch. 153, L. 1955.

**94-9828. Duties of the director.** The director shall be the executive officer of the board. He shall be responsible for such investigation and supervision as may be requested by the board or the courts. He shall, subject to the approval of the board, divide the state into districts and assign probation and parole officers to serve in the various districts and courts; he shall obtain office quarters for such staff in each district as may be necessary. He shall assign the secretarial, bookkeeping and accounting work to the clerical employees, including receipt and disbursement of money. He shall direct the work of the probation and parole officers and other employees assigned to him. He shall formulate methods of investigation, supervision, record keeping and reports. He shall conduct training courses for the staff. He shall seek to cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole. He shall further be charged with the administration of the provisions of the interstate compact for the supervision of parolees and probationers.

**History:** En. Sec. 8, Ch. 153, L. 1955.

**94-9829. Duties of probation and parole officers.** Probation and parole officers shall investigate all persons referred to them for investigation by the director of probation and parole or by any court to which they are instructed by the director to serve. They shall furnish to each person released under their supervision a written statement of the conditions of probation or parole and shall instruct him regarding same. They shall keep informed of the conduct and condition of each person released under their supervision and use all suitable methods to aid and encourage him to bring about improvement in his conduct and condition. Probation and parole officers shall keep detailed records of their work. They shall supervise the collection and disbursement of all moneys when so instructed by the director in accordance with the orders of a court. They shall make such reports in writing as the director may require.

**History:** En. Sec. 9, Ch. 153, L. 1955.

**94-9830. Conditions of probation or suspension of sentence.** The board may adopt general rules or regulations concerning the conditions of probation or suspension of sentence. Such conditions shall apply in the absence of any specific or inconsistent conditions imposed by a court. Nothing herein contained shall limit the authority of the court to impose or modify any general or specific conditions of probation or of suspension of sentence.

The probation and parole officer may recommend, and by order duly entered, a court may modify any conditions of probation or suspension of sentence at any time. Due notice shall be given to the probation and parole officer before any such conditions are modified and he shall be given an opportunity to be heard thereon. The court shall cause a copy of any such order to be delivered to the probation and parole officer and the probationer.

History: En. Sec. 10, Ch. 153, L. 1955.

**94-9831. Arrest—subsequent disposition.** At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation and parole officer may arrest such defendant without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime, shall be applicable to the defendants arrested under these provisions.

Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner, and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary. If the violation is established, the court may continue to revoke the probation or suspension of sentence, and may require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court, shall, after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from, or to have fled from, justice. If it shall appear that he



has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served on probation or suspended sentence, shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955.

**94-9832. Parole authority and procedure.** The board shall release on parole any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided,

1. That no convict serving a time sentence shall be paroled until he shall have served at least one-quarter ( $\frac{1}{4}$ ) of his full term, less good time allowances off, as provided in section 80-740; except that any convict serving a time sentence may be paroled after he shall have served, upon his term of sentence, twelve and one-half ( $12\frac{1}{2}$ ) years;

2. No convict, serving a life sentence, shall be paroled until he shall have served twenty-five (25) years, less the good time allowances off, as provided in section 80-740. All paroles shall issue upon order of the board, duly adopted.

Within two (2) months after his admission and at such intervals thereafter as it may determine, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made.

Before ordering the parole of any prisoner, the board shall have the prisoner appear before it and shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof.

History: En. Sec. 12, Ch. 153, L. 1955.

#### References

Cited or applied in State ex rel. Ball v. Burrell, 129 M 585, 292 P 2d 144.

**94-9833. Conditional release.** A prisoner having served one-fourth ( $\frac{1}{4}$ ) of his term or terms, less good time allowances, shall upon parole, be deemed as released on parole until the expiration of the maximum term or terms for which he was sentenced less good time allowances as provided in section 80-740.

History: En. Sec. 13, Ch. 153, L. 1955.

**94-9834. Information from prison officials.** It shall be the duty of all prison officials to grant to the members of the board, or its properly accredited representatives, access at all reasonable times to any prisoner over whom the board has jurisdiction under this act, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

**History:** En. Sec. 14, Ch. 153, L. 1955.

**94-9835. Persons may be heard—counsel.** The board shall be required to hear oral statements from all persons desiring to be heard before the board and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

**History:** En. Sec. 15, Ch. 153, L. 1955.

**94-9836. Subpoenas.** The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof. Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law-enforcement officer. In case of contumacy by, or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail, or refuse to attend and testify, or to answer any lawful inquiry or to produce records, books, papers and other documents if it is in his power to do so, in obedience to a subpoena of the board or any member thereof, shall be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

**History:** En. Sec. 16, Ch. 153, L. 1955.

**94-9837. Rules.** The board shall have the power and duty to make rules for the conduct of persons heretofore or hereafter placed on parole or on probation under the supervision of the board by any court in this state, and for the investigation and supervision of such persons, except that the board shall not make any rule applying to a person on probation which conflicts with the conditions of probation imposed by the court.

**History:** En. Sec. 17, Ch. 153, L. 1955.

**94-9838. Return of parole violator.** At any time during release on parole or conditional release the board may issue a warrant for the arrest of

the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the board. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner shall remain incarcerated in such institution.

Upon such arrest and detention, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board.

**History:** En. Sec. 18, Ch. 153, L. 1955.

**94-9839. Service of term for additional crime.** Any prisoner who commits a crime while at large upon parole or conditional release, and who is convicted and sentenced therefor, shall serve such sentence concurrently with the terms under which he was released, unless otherwise ordered by the court in sentencing for the new offense.

**History:** En. Sec. 19, Ch. 153, L. 1955.

**94-9840. Discharge of prisoner, parolee or conditional releasee.** The period served on parole or conditional release shall be deemed service of the term of imprisonment, and, subject to the provisions contained in section 18 [94-9838] herein relating to a prisoner who is a fugitive from, or has fled from, justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed



the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: En. Sec. 20, Ch. 153, L. 1955.

**94-9841. Cases of executive clemency.** The board shall investigate and report to the governor with respect to all cases of pardons, remissions of fines and forfeitures, and commutations of punishment after conviction and judgment for any offenses committed against the criminal laws of the state. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955.

**94-9842. Notice of hearing applications for executive clemency.** After the board has duly considered an application for executive clemency, and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for Executive Clemency concerning \_\_\_\_\_, a convict confined in the State Prison (or to one \_\_\_\_\_, who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of \_\_\_\_\_ committed at \_\_\_\_\_, in the County of \_\_\_\_\_, State of Montana, on the \_\_\_\_\_ day of \_\_\_\_\_, 19—, and sentenced for a term of \_\_\_\_\_ years.

"Therefore, be it ordered that \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 19—, be set apart for the consideration of said Executive Clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon (or commutation, remission of the fine or forfeiture) are hereby notified to be present at \_\_\_\_\_ o'clock of said day, at \_\_\_\_\_.

"Further, ordered that a copy of this order be printed and published in the \_\_\_\_\_ (here insert name of some newspaper of general circulation in the county where the crime was committed) a daily (or weekly) newspaper printed and published at \_\_\_\_\_ in the county of \_\_\_\_\_, once each week for two weeks beginning, \_\_\_\_\_, 19—, and ending \_\_\_\_\_."

History: En. Sec. 22, Ch. 153, L. 1955.

**94-9843. Publication of order.** The board must cause a copy of such order to be published in the newspaper therein designated, at least once a week for two weeks prior to the hearing, and at the same time cause to be deposited in the postoffice at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney and sheriff, respectively, of the county where the crime was committed, and in like manner mail a copy of the order to the petitioner and the convict.

History: En. Sec. 23, Ch. 153, L. 1955.

**94-9844. Proof of publication.** Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

**History:** En. Sec. 24, Ch. 153, L. 1955.

**94-9845. Record of meeting, what to contain.** At the hearing the board must cause to be kept a record showing:

1. The name of all persons appearing before the board on behalf of the person pardoned by the governor;
2. The name of all persons appearing before the board in opposition to the granting of the same;
3. The testimony of all persons giving evidence before the board;
4. That the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

**History:** En. Sec. 25, Ch. 153, L. 1955.

**94-9846. When publication not necessary.** No publication need be made as provided in sections 22, 23 and 24 [94-9842, 94-9843 and 94-9844], in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.
2. When the term of imprisonment of the applicant is within ten (10) days of its expiration.

**History:** En. Sec. 26, Ch. 153, L. 1955.

**94-9847. Decision to be made.** Within thirty (30) days after the hearing of any case, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision, together with all papers used in each case shall be immediately transmitted to the governor.

**History:** En. Sec. 27, Ch. 153, L. 1955.

**94-9848. Governor may respite.** The governor has the power to grant respites after conviction and judgment, for any offenses committed against the criminal laws of the state, for such time as he thinks proper.

**History:** En. Sec. 28, Ch. 153, L. 1955.

**94-9849. Governor to report to legislative assembly.** The governor must communicate to the legislative assembly at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

**History:** En. Sec. 29, Ch. 153, L. 1955.

**94-9850. Cases of juveniles excluded.** The provisions of this act shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

**History:** En. Sec. 30, Ch. 153, L. 1955.

**94-9851. Effective date—application to persons presently on parole or probation or eligible for.** This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws, with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon as the case may be, provided that no person convicted and sentenced before the effective date hereof shall have his rights and earned good time reduced by the application of this act.

**History:** En. Sec. 33, Ch. 153, L. 1955.

#### Separability Clause

#### Repealing Clause

Section 31 of Ch. 153, Laws 1955 read "That sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

Section 32 of Ch. 153, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

### CHAPTER 99—BASTARDY PROCEEDINGS

#### 94-9908. (12274) Power of court over judgments and orders.

Foreign filiation or support order in bastardy proceedings, requiring periodic

payments, as extraterritorially enforceable. 16 ALR 2d 1098.

### CHAPTER 100—JUSTICES' AND POLICE COURT PROCEEDINGS—APPEALS

Section 94-100-25. Proceedings on plea of guilty or on conviction.

#### 94-100-1. (12302) Proceedings must be by complaint.

##### Sufficiency of Complaint

A complaint is sufficient where it stated facts constituting a public offense and charged a violation of the provisions of section 4-414, which is a misdemeanor

(4-439) within the jurisdiction of the justice of the peace court under section 94-4916. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

#### 94-100-4. (12305) Plea, how put in.

Written "Special Plea in Bar" Not Authorized

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written "Special Plea in Bar" and order-

ing the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-6802. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859, 861.

#### 94-100-10. (12311) New complaint.

##### References

Cited or applied in State ex rel. Borberg

v. District Court, 125 M 481, 240 P 2d 854, 856.

**94-100-25. (12326) Proceedings on plea of guilty or on conviction.** When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. The judgment must be executed by the sheriff,



constable, marshal or policeman of the jurisdiction in which the conviction was had.

**History:** En. Sec. 2704, Pen. C. 1895; re-en. Sec. 9608, Rev. C. 1907; re-en. Sec. 12326, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1955. Cal. Pen. C. Sec. 1445.

#### Amendment

The 1955 amendment substituted the word "or" for "and" between the words "fine" and "imprisonment."

### 94-100-33. (12334) Defendant may appeal.

#### References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d

854, 861; State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542.

### 94-100-34. (12335) Notice of appeal.

#### Application of Section

This section permitting appeal by notice in open court does not apply to the taking of an appeal to the Supreme Court from a judgment of a district court. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

#### References

Cited in State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542.

### 94-100-38. (12339) Trial anew.

#### Operation and Effect

Where an appeal is taken to the district court from a conviction in a police court for a liquor law violation, but neither the city nor the defendant requested the cause be set for trial, the judge of the court could not order the appeal dismissed "for want of prosecution" without giving notice to the defendant. Such an order is

void and in excess of jurisdiction. State ex rel. Healy v. District Court, 125 M 77, 230 P 2d 763.

#### References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542.

## CHAPTER 101—THE WRIT OF HABEAS CORPUS

### 94-101-1. (12348) Who may prosecute writ.

#### References

Cited or applied in State ex rel. Reid v.

District Court, 126 M 489, 255 P 2d 693, 704.

### 94-101-2. (12349) Application for, how made.

#### References

Cited or applied in Application of Enke,

129 M 353, 287 P 2d 19, 22, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

### 94-101-15. (12362) Grounds of discharge in certain cases.

#### Motives of Prosecution

On a hearing of a habeas corpus sued out for the liberation of one who is sought to be extradited for the violation of the criminal laws of another state, upon a warrant of the governor issued upon

a requisition of a demanding state, it is not admissible to hear evidence upon, or to inquire into, the motives or purposes of the prosecution. State v. Booth, — M —, 328 P 2d 1104, 1111.

### 94-101-21. (12368) Person illegally restrained may be committed to, etc.

#### References

Cited or applied in Application of Butts, 129 M 440, 289 P 2d 949, 951.

## CHAPTER 201—CORONER'S INQUESTS

Section 94-201-6. Testimony in writing and where filed.

**94-201-6. (12386) Testimony in writing and where filed.** The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer and such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

**History:** En. Sec. 2795, Pen. C. 1895; re-en. Sec. 9668, Rev. C. 1907; re-en. Sec. 12386, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1959. Cal. Pen. C. Sec. 1515.

**Repealing Clause**

Section 2 of Ch. 56, Laws 1959, repealed all acts and parts of acts in conflict therewith.

**Amendment**

The 1959 amendment added the last sentence to this section.

## CHAPTER 301—SEARCH WARRANTS

**94-301-19. (12412) Property, when to be restored.**

Forfeiture of money used in connection with gambling or lottery, or seized by officers in connection with an arrest or

search on premises where such activities took place. 19 ALR 2d 1228.

## CHAPTER 501—UNIFORM CRIMINAL EXTRADITION ACT

**94-501-1. Definitions.****References**

Cited or applied in *State ex rel. Midlemas v. District Court*, 125 M 310, 233

P 2d 1038, 1039; *State v. Booth*, — M —, 328 P 2d 1104, 1109.

**94-501-3. Demand—form.****Improper Form, Discharge of Fugitive**

If the demand for extradition to the governor of the asylum state is not in proper form, the alleged fugitive will be discharged. *State v. Booth*, — M —, 328 P 2d 1104, 1109.

**Substantial Charge of Crime**

A substantial charge of crime in the required papers submitted by the demanding state is a sufficient basis for extradition. *State v. Booth*, — M —, 328 P 2d 1104, 1110.

**94-501-6. Extradition of persons not present in demanding state, etc.****References**

Cited in *State v. Booth*, — M —, 328 P 2d 1104, 1109.

**94-501-7. Issuance of warrant of arrest by governor—recitals therein.****References**

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

**94-501-20. Guilt or innocence of accused, when inquired into.****Operation and Effect**

It is sufficient in habeas corpus pro-

ceedings to justify holding the petitioner if it is shown in Montana that the gover-

nor received from the governor of Oregon a copy of the affidavit made by the prosecuting witness, charging the defendant with a felony and also of the warrant of arrest issued by the judge of a district

court of the state of Oregon and duly authenticated. State ex rel. Middlemas v. District Court, 125 M 310, 233 P 2d 1038, 1040.

## CHAPTER 901—RECIPROCAL ENFORCEMENT OF SUPPORT

Section 94-901-1.	Purposes.
94-901-2.	Definitions.
94-901-3.	Remedies additional to those now existing.
94-901-4.	Extent of duties of support.
94-901-5.	Criminal enforcement—extradition.
94-901-6.	Relief from the above provisions.
94-901-7.	Civil enforcement—what duties are enforceable.
94-901-8.	Remedies of a state or political subdivision thereof furnishing support.
94-901-9.	How duties of support are enforced.
94-901-10.	Contents of petition or complaint for support.
94-901-11.	Duty of court of this state as initiating state.
94-901-12.	Duty of the court of this state as responding state.
94-901-13.	Order of support.
94-901-14.	Responding state to transmit copies to initiating state.
94-901-15.	Additional powers of court.
94-901-16.	Additional duties of the court of this state when acting as responding state.
94-901-17.	Additional duty of the court of this state when acting as an initiating state.
94-901-18.	Evidence of husband and wife.

**94-901-1. Purposes.** The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

**History:** En. Sec. 1, Ch. 222, L. 1951.

**References**

Cited in Barbour v. Barbour, — M —, 330 P 2d 1093, 1098.

### Title of Act

An act to establish a uniform reciprocal enforcement of support; providing definitions; providing additional remedies; providing for criminal enforcement by extradition; providing for civil enforcement in district court; providing duties in district court to respond to judgments in support actions brought in the states with reciprocal laws.

Divorce ⚡ 261, 311; Husband and Wife ⚡ 281, 299(4), 316; Parent and Child ⚡ 3(3), 17.

27 C.J.S. Divorce §§ 253, 321; 42 C.J.S. Husband and Wife §§ 606, 625, 646; 67 C.J.S. Parent and Child §§ 20, 91.

**94-901-2. Definitions.** As used in this act unless the context requires otherwise,

(1) "State" includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "Court" means the district court of any judicial district of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) "Law" includes both common and statute law.



(6) "Duty of support" includes any duty of support imposed or impossible by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(7) "Obligor" means any person owing a duty of support.

(8) "Obligee" means any person to whom a duty of support is owed.

History: En. Sec. 2, Ch. 222, L. 1951.

**94-901-3. Remedies additional to those now existing.** The remedies herein provided are in addition to and not in substitution for any other remedies.

History: En. Sec. 3, Ch. 222, L. 1951.

**94-901-4. Extent of duties of support.** The duty of support imposed by the laws of this state or by the laws of the state where the obligee was present when the failure to support commenced as provided in section 7 [94-901-7] and the remedies provided for enforcement thereof, including any penalty imposed thereby, bind the obligor regardless of the presence or residence of the obligee.

History: En. Sec. 4, Ch. 222, L. 1951.

**94-901-5. Criminal enforcement—extradition.** The governor of this state (1) may demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state and (2) may surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other state.

History: En. Sec. 5, Ch. 222, L. 1951.

Extradition—30.

Cross-Reference

35 C.J.S. Extradition § 10.

Extradition, secs. 94-501-1 to 94-501-32.

**94-901-6. Relief from the above provisions.** Any obligor contemplated by section 5 [94-901-5], who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this state during the period of such compliance.

History: En. Sec. 6, Ch. 222, L. 1951.

**94-901-7. Civil enforcement—what duties are enforceable.** Duties of support enforceable under this law are those imposed or impossible under the laws of any state where the alleged obligor was present during the

period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee.

History: En. Sec. 7, Ch. 222, L. 1951.

**94-901-8. Remedies of a state or political subdivision thereof furnishing support.** Whenever the state or a political subdivision thereof has furnished support to an obligee it shall have the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made.

History: En. Sec. 8, Ch. 222, L. 1951.

**94-901-9. How duties of support are enforced.** All duties of support are enforceable by petition or complaint irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the district court.

History: En. Sec. 9, Ch. 222, L. 1951.

**94-901-10. Contents of petition or complaint for support.** The petition or complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information.

History: En. Sec. 10, Ch. 222, L. 1951.

**94-901-11. Duty of court of this state as initiating state.** If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, he shall so certify and shall cause certified copies of the petition, the certificate and an authenticated copy of this act to be transmitted to the court of the responding state.

History: En. Sec. 11, Ch. 222, L. 1951.

**94-901-12. Duty of the court of this state as responding state.** When the district court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall (1) docket the cause, (2) direct the clerk of the district court to inform the county attorney to proceed with the cause, (3) set a time and place for a hearing, and (4) take such action as is necessary in accordance with the laws of this state to obtain jurisdiction.

History: En. Sec. 12, Ch. 222, L. 1951.

**94-901-13. Order of support.** If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

History: En. Sec. 13, Ch. 222, L. 1951.

**94-901-14. Responding state to transmit copies to initiating state.** The court of this state when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or orders for reimbursement therefor.

History: En. Sec. 14, Ch. 222, L. 1951.

**94-901-15. Additional powers of court.** In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(a) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to the clerk of the court or the obligee and to report personally to such clerk at such times as may be deemed necessary.

(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

History: En. Sec. 15, Ch. 222, L. 1951.

**94-901-16. Additional duties of the court of this state when acting as responding state.** The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(b) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

History: En. Sec. 16, Ch. 222, L. 1951.

**94-901-17. Additional duty of the court of this state when acting as an initiating state.** The court of this state when acting as an initiating state shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

History: En. Sec. 17, Ch. 222, L. 1951.

**94-901-18. Evidence of husband and wife.** Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

History: En. Sec. 18, Ch. 222, L. 1951.

#### **Separability of Provisions**

Section 19 of Ch. 222, L. 1951 read, "If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

#### **Repealing Clause**

Section 20 of Ch. 222, L. 1951 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 21 of Ch. 222, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 5, 1951.



















# REVISED CODES OF MONTANA

## VOLUME 9 1959 Cumulative Pocket Supplement

### *Indexing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 9 OF THE  
1947 REVISED CODES

### *Edited by*

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

### *Editorial Supervisor*

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana



COPYRIGHT 1959  
*by*  
THE ALLEN SMITH COMPANY

# INDEX

---

## A

### ACADEMY

Law enforcement academy, 75-5201 to 75-5208—See COLLEGES AND UNIVERSITIES, Law enforcement academy

### ACCOUNTANTS

Fee for examination, 66-1806

### ADJUTANT GENERAL

Rank, 77-117

Salary, 77-117

Selection, 77-117

### ADVERTISING

Consumer loan licensees, limitations on, 47-219

### AGRICULTURE

Coloration of wheat, oats, rye or barley

required when products treated with injurious or toxic substances, 94-35-271.1

sale or offering for sale in violation of act prohibited, 94-35-271.2

violation of act requiring coloration, penalty, 94-35-271.3

Commercial feeds

disposition of fees, 3-2004

registration fee, 3-2004

not applicable to special formula mix purchased by consumer or purchaser, 3-2004

stop sale, use or removal orders, power of commissioner of agriculture, 3-2011

Commercial fertilizers

analysis

expenses, 3-1709

report, 3-1709

Commissioner of agriculture

depositing of license fees arising from commercial fertilizer regulatory act, 3-1709

stop sale, use or removal of commercial feeds, power to issue and enforce, 3-2011

Department of agriculture

enforcement of act regarding labelling of paints and paint products, 3-1513

Grain warehousemen

bond, 3-228

insurance coverage, required, 3-228

license fee, 3-228

penalty for operation without license, 3-228

### ALCOHOLIC BEVERAGES

Bottle clubs

abatement as nuisance, 4-173

penalty for violation, 4-173

prohibited, 4-172

Montana beer act

brewers

barrelage tax, 4-317

financial interest in retailer prohibited, 4-349

fixtures, furniture, equipment, etc., brewers not to supply to retailers, exception, 4-349

persons to whom brewers may sell beer, 4-317

cash sales for beer delivered to retail licensee, 4-349



## INDEX

References are to Title and Section numbers

### ALCOHOLIC BEVERAGES (Continued)

#### Montana beer act (Continued)

- closing hours for licensed retail establishments, 4-303
- credit, limitation on brewer or wholesaler from extending to retailer, 4-349
- days establishments to be closed, 4-303
- imported beer, tax on, 4-324
- licenses
  - issuing for operation on seasonal basis, 4-333
  - lapse for nonuse, 4-333
- wholesalers, fixtures, furniture and equipment not to be furnished by, exception, 4-349

#### Retail liquor license act

- days retail establishments to be closed, 4-414
- hours retail establishments to be closed, 4-414
- lapse of license for nonuse, 4-403
- license for seasonal operation, 4-403

### ANNEXATION

Contiguous tracts or parcels of land, annexing to cities, procedure, 11-403

### APPEALS

- Bond to stay execution of judgment, 93-8007
  - conditions of bond, 93-8007
- Consumer loan commissioner, appeals from, 47-225
- Highway patrolman from order suspending, demoting or discharging him, 31-105
- Judicial review of orders of milk control board, 27-428
- Occupational disease act, appeals under, 92-1362 to 92-1365
- Tort actions against state, 83-703

### ARRESTS

- Radar arrest cases—See MOTOR VEHICLES, Radar arrests
- Roadblocks, arrests at, 94-6030

### ASSIGNMENTS

- Consumer loan act, wage assignments, 47-220

### ATTACHMENT

- Compensation under occupational disease act exempt from, 92-1329

### ATTORNEY GENERAL

- Compromise and settlement of tort actions against state, power, 83-704
- Occupational disease act, duties under, 92-1343
- Salary, 25-501
- Service of process upon in tort actions against state, 83-704
- Tort actions against state, responsibility for litigation on behalf of state, 83-704

### ATTORNEYS

- Attorney as justice of the peace, practice of law, limitation, 16-3605

### AUCTION LAW

- Exemptions from act, 66-229

### AUTOPSIES

- Occupational disease act, autopsies under, 92-1318

## B

### BANKS AND BANKING

- Examination of bank, trust company or investment company, fee for, 5-908
- Limitation on real estate loans, 5-506
- Real estate loans, limitations on, 5-506
- Retail installment sales act
  - compliance with provisions other than licensing required, 74-603
  - license not required under, 74-603
- Special examination by state examiner, fee, 5-910

## INDEX

References are to Title and Section numbers

### BOARDING HOMES

Definitions, 69-2401

### BOILERS

Engineer's license, fee, 69-1512  
    annual renewal, 69-1516  
    disposition of money, 69-1516  
    fee for renewal, 69-1516  
Fees for inspection, 69-1512

### BONDS AND UNDERTAKINGS

Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials  
Limitation on indebtedness of cities, towns, townships, school districts or high school districts, XIII, 6

### BUILDING AND LOAN ASSOCIATIONS

Examination by state examiner, fee for, 5-909  
Special examination by state examiner, fee, 5-910

### BUTCHERS AND MEAT PEDDLERS

Persons exempted from procuring license for having meat inspected or stamped, 46-504

## C

### CHILDREN AND MINORS

Ages during which school attendance compulsory, 75-2901  
Attendance at schools, 75-2901  
Causing, contributing to or permitting law violations by children, penalty, 10-617  
Change of name of state orphan's home to Montana children's center, 10-101.1  
Failure of parent or guardian or person having custody to require school attendance, penalty, 75-2901  
Lewd and lascivious acts upon children, penalty, 94-4106  
Unlawful operation of motor vehicle by child under 18  
    court learning of unlawful operation, action which may be taken after hearing or investigation, 32-21-165  
    exclusive jurisdiction of district court, 32-21-163  
    impounding of vehicle, when, 32-21-163  
    penalty, 32-21-163  
    summoning of child, 32-21-164

### CITIES AND TOWNS

Annexation  
    contiguous platted tracts or other parcels of land, procedure, 11-403  
Contracts  
    advertising letting of, 11-1202  
    awarding, 11-1202  
    emergency contracts, when authorized, 11-1202  
    exemptions from act, 11-1202  
    installment payments, 11-1202  
    submission to electors at election, when required, 11-1202  
Enumeration of purposes for which indebtedness may be incurred, 11-966  
Examination by state examiner, fees, 5-905  
Examination of accounts by state examiner, 82-1008  
Fire departments  
    fire department relief associations  
        premium tax collected from certain insurers, receipt from state auditor, 11-1919  
        tax levy for disability and pension funds, 11-1912  
Fire protection in unincorporated towns  
    fire districts  
        change of boundaries, 11-2008  
        contracts with cities and towns and private services for fire protection, 11-2008  
        creation, 11-2008

## INDEX

References are to Title and Section numbers

### CITIES AND TOWNS (Continued)

#### Fire protection in unincorporated towns (Continued)

- fire districts (Continued)

  - dissolution, 11-2008

  - trustees, 11-2010

  - powers, 11-2010

- fire insurance premium tax deposited into volunteer fireman's compensation fund, amount, 11-2030

#### Indebtedness

- electors at elections concerning

  - persons entitled to vote, 11-2310

  - registration, 11-2310

- form and execution of bonds, 11-2316

- limitation on incurring, XIII, 6

- power to incur, 11-966

- purposes for which indebtedness may be incurred, 11-966

- Limitation on indebtedness, XIII, 6

- Municipal revenue bond act, definitions, 11-2402

- Planning and zoning—See PLANNING AND ZONING

#### Police department

- appointment of commission in third class cities, when required, 11-1804.1

- appointment of persons to do police duty who are not members of police department, authority of mayor, 11-1806

- discharge of policemen in third class city when police commission established, 11-1804.1

- fund for payment of officers on reserve list, 11-1823

  - tax levy, 11-1823

- qualifications, enumeration of qualifications of policemen, 11-1814

- suspension of policemen by mayor or chief of police

  - appeal, 11-1806

  - authority, 11-1806

  - limitation on length of suspension, 11-1806

- Resolution of required findings, 11-3905

- Special examination by state examiner, fee, 5-910

#### Special improvement districts

- bonds and warrants

  - form, 11-2231

  - provisions, 11-2231

  - redemption, 11-2231

  - signing, 11-2231

- form of bonds and warrants, 11-2231

- notice of resolution of intention, contents, persons to whom given, 11-2204

- warrants and bonds, form, 11-2231

- Third class cities, appointment of police commission upon request of policemen, 11-1804.1

#### Urban renewal law

- "agency" defined, 11-3901

- annual report of urban renewal agency, 11-3916

- bidding upon disposition of real property, 11-3909

- "blighted area" defined, 11-3901

- blighted areas, finding of public interest in, 11-3902

#### bonds

  - bonds issued do not constitute an indebtedness within meaning of constitutional or statutory debt limitations, 11-3910

  - definition, 11-3901

  - general credit of municipality not to be pledged, 11-3910.

  - payment, 11-3910

  - power to issue, 11-3910

  - resolution authorized, 11-3910

  - sale, terms, 11-3910

- bonds as legal investments, 11-3911

- borrowing power, 11-3907

- clearance and redevelopment of blighted areas, inclusion in program, 11-3904

- "clerk" defined, 11-3901

- contract powers of municipality, 11-3907



## INDEX

References are to Title and Section numbers

### CITIES AND TOWNS (Continued)

#### Urban renewal law (Continued)

- cooperation by other public bodies, 11-3913
- definitions, 11-3901
- disclosure of interest in property within area, duty of public officers, 11-3918
- discrimination because of race, creed, color or a national origin prohibited, 11-3917
- election, submission to electors for approval of plan, 11-3906
- eminent domain
  - compensation, 11-3908
  - power of municipality, 11-3908
- exercise of powers by municipality itself or by agency or department or other officers, 11-3915
- fair value in sales or leases by municipality, 11-3909
- "federal government" defined, 11-3901
- findings required before exercise of powers, 11-3905
- interest, direct or indirect in project or property by public officials, commissioners or employees prohibited, 11-3918
- investment of project funds, 11-3907
- legislative finding and declaration of necessity for act, 11-3902
- "local governing body" defined, 11-3901
- "mayor" defined, 11-3901
- "municipality" defined, 11-3901
- "obligee" defined, 11-3901
- operation and maintenance of real property, power of municipality, 11-3909
- "person" defined, 11-3901
- plans, powers concerning, 11-3907
- powers additional and supplemental to other powers conferred by law, 11-3919
- powers of municipality, enumeration, 11-3907
- prevention of spread of blight into areas, inclusion in program, 11-3904
- private enterprise, encouragement of, 11-3903
- program for, 11-3904
- property exempt from taxes, termination of exemption upon sale, lease or disposition, 11-3912
- property, power of municipality to sell, lease or transfer, 11-3909
- "public body" defined, 11-3901
- "public officer" defined, 11-3901
- purchasers or lessees of property, obligation to comply with uses specified in urban renewal plan, 11-3909
- "real property" defined, 11-3901
- "redevelopment" defined, 11-3901
- "rehabilitation" defined, 11-3901
- rehabilitation of blighted areas, inclusion in program, 11-3904
- resolution of required findings, 11-3905
- restrictions in instruments of conveyance to private purchaser or lessee, authority, 11-3909
- short title of act, 11-3920
- surveys and appraisals, power to enter buildings and property for, 11-3907
- tax exemption of property, termination of exemption upon sale, lease or other disposition, 11-3912
- title of purchaser, 11-3914
- urban renewal agency
  - annual report, 11-3916
  - commissioners
    - appointment, 11-3915
    - expenses, 11-3916
    - meetings, 11-3916
    - removal, 11-3916
    - term of office, 11-3916
  - definition, 11-3901
  - determination that agency shall exercise powers, 11-3915
  - employees, 11-3916
  - powers, 11-3915
- "urban renewal area" defined, 11-3901
- urban renewal plan
  - definition, 11-3901
  - hearing on, 11-3906
  - notice of hearing on, 11-3906

## INDEX

References are to Title and Section numbers

### **CITIES AND TOWNS (Continued)**

- Urban renewal law (Continued)
  - urban renewal plan (Continued)
    - preparation, who may prepare, 11-3906
    - submission to electors at election, 11-3906
    - submission to planning commission of municipality, 11-3906
  - urban renewal project
    - approval by local governing body, 11-3906
    - definition, 11-3901
    - determinations required, 11-3906
    - modification, 11-3906
  - workable program, 11-3904

### **CIVIL PROCEDURE**

- Federal rules, proposed adoption
  - administrative bodies, act not to affect powers concerning rules governing practice, 93-228
  - adoption by legislature before rules effective, 93-229
  - changes, amendments and additional rules, procedure for accomplishing, 93-230
  - commission
    - appointment, 93-222
    - duties, 93-222
    - expenses of members, 93-232
    - number of members, 93-222
    - organization, 93-233
    - records, 93-233
    - secretary-stenographer, appointment, 93-231
    - selection of members, 93-223
    - services of research agency, power to employ, 93-231
  - local rules of practice, authority for courts to adopt so long as not in conflict with promulgated rules, 93-227
  - proposed rules
    - distribution to bench and bar for consideration and suggestions, 93-224
    - preparation, 93-224
  - purpose of act, 93-221
  - tentative final draft
    - hearing on, 93-226
    - submission to supreme court, 93-225
- Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

### **CLERK OF SUPREME COURT**

- Salary, 25-501

### **CODES AND LAWS**

- Replacement Volumes 1 and 9 to Revised Codes of Montana, 1947
  - adoption, 12-337
  - omissions or inaccuracies, effect, 12-338

### **COLLEGES AND UNIVERSITIES**

- Control and supervision vested in state board of education, 75-107
- Examination of accounts and books of units of university of Montana, 82-1014
  - duty of fiscal officers and employees to aid in examination, 82-1015
  - report of examination and audit, 82-1016
- Executive secretary of university of Montana, 75-107
- Experimental station in horticulture
  - authority to accept donations of land, 75-710.3
  - change of name, 75-710.1
  - donations of money, implements, livestock, authority to receive, 75-710.4
  - function, 75-710.2
- Faculty and president of state institutions, employment by state board of education, 75-107
- Law enforcement academy
  - advisory board
    - composition, 75-5205
    - duties and powers, 75-5206
    - term of members, 75-5205

## INDEX

References are to Title and Section numbers

### COLLEGES AND UNIVERSITIES (Continued)

#### Law enforcement academy (Continued)

- establishment, 75-5203
- expenditure of funds for attendance of officers, lawful, 75-5208
- officers in attendance at academy not to suffer loss of salary, vacation, seniority or other rights, 75-5207
- persons eligible for admission, 75-5204
- purpose of establishing, 75-5202
- short title, 75-5201

### CONSTITUTIONAL AMENDMENTS

Limitation on indebtedness of city, town, township, school district or high school district, XIII, 6

### CONSUMER LOAN ACT

- Advertising, limitations on, 47-219
- Annual examination of licensee, 47-216
- Annual report
  - contents, 47-218
  - date required, 47-218
- Appeals from order of commissioner, 47-225
- Change of place of business, 47-206
- "Commissioner" defined, 47-202
- Confessions of judgment prohibited, 47-213
- Consumer loan commissioner
  - access to records, power, 47-226
  - annual examination of licensee, 47-216
  - appeals from, 47-225
  - bank examiner designated, 47-203
  - cease and desist orders, 47-227
  - investigative powers, 47-215
  - office created, 47-203
  - powers and duties vested in, 47-203
- "Consumer type loan business" defined, 47-202
- Contents of annual report required of licensee, 47-218
- Contract or statement of contents
  - copy to be furnished borrower, 47-212
  - required contents, 47-212
- Contracts of loan violating act, effect, 47-204
- Definitions, 47-202
- Exemptions from act, 47-204
- Fee for annual examination of licensee, 47-216
- First installment payment, date for, 47-211
- Injunctions, power, 47-227
- Installment payments, time period for, 47-211
- Instruments containing blanks prohibited, exception, 47-213
- Insurance
  - loans in excess of \$300.00, licensee may require borrower to insure tangible personal property, 47-214
  - loans of less than \$300.00, licensee not to write, 47-214
  - obtainable through insurance companies, 47-214
- Interest charged, maximum, 47-204
- Investigations, 47-215
- License
  - definition, 47-202
  - denial, 47-207
  - fee, 47-206
  - fee for annual examination of licensee, 47-216
  - fee for renewal, 47-209
  - issuance, 47-207
  - liability of licensee not affected by surrender of license, 47-221
  - license year, 47-206
  - notifying applicant of denial of license, 47-207
  - operating without, penalty, 47-228
  - pre-existing lawful contracts not affected by surrender, revocation or expiration of license, 47-222
  - reinstatement, 47-224



## INDEX

References are to Title and Section numbers

### CONSUMER LOAN ACT (Continued)

#### License (Continued)

- renewal, 47-209
- required, 47-206
- surrender of license by licensee, 47-221
- suspension or revocation
  - hearing, 47-223
  - notice, 47-223
  - reinstatement, when, 47-224

"Licensee" defined, 47-202

Loans in excess of \$1,000 by licensee prohibited, 47-205

Penalties for violations of act, 47-228

Period of time licensee required to preserve records, 47-217

"Person" defined, 47-202

#### Place of business

- change, effect on license, 47-206
- conduct of other business in same office, 47-208
- license required for, 47-206

#### Rates and charges

- additional charge, default or extension agreement, 47-210
- excess charges, effect, 47-210
- maximum rate of charge, 47-210
- penalty for violation, 47-228
- permissible rates, 47-210
- recording fees, 47-210
- refunds, 47-210

Receipt, licensee required to give, 47-212

Receivers, appointment for licensees, 47-227

Records, access of commissioner to, 47-226

Records required of licensee, 47-217

Repayment of loan in full, duty of licensee upon, 47-212.

Rules and regulations, 47-203

Scope of act, 47-204

Short title, 47-201

Time period for repayment, limitations on, 47-211

Wage assignments, 47-220

### CORONERS

Report of accidents resulting in death, 32-1211

### CORPORATIONS

Corporation license tax—See TAXATION, Corporation license tax

Election by small business corporation not to be subject to corporation license tax, 84-1501.1, 84-1501.2

#### Transfer of stock

- corporation or agent not bound to determine whether fiduciary breaching obligation, 86-705
- "fiduciary" defined, 86-706

### COSMETOLOGY

Apprentice license, fee, 66-815

Injunctions, 66-817

Itinerant license, fee, 66-815

Manager-operator license, fee, 66-815

Operator's license, fee, 66-815

Prohibited acts, 66-817

School of cosmetology, fee for operation and conducting, 66-815

Teacher of cosmetology, fee, 66-815

Violations of act, 66-817

### COUNTIES

Bond issue elections, 16-2026

Commission for management of civic centers, youth centers, museums, parks, hospitals, etc., 16-1008A

County buildings and improvements, erection and management, 16-1008A

## INDEX

References are to Title and Section numbers

### COUNTIES (Continued)

County hospital, 16-1008A

County water districts

collection of water tax, 16-4528

corporation voting at election, 16-4508

laws governing elections, 16-4508

levy of water tax, 16-4528

notice of tax assessment, 16-4527

persons owning real property within district but residing outside, authority for voting, 16-4508

protest against tax assessment, 16-4527

publication of notice of election, 16-4520

qualified electors, 16-4520

revenues as inadequate to pay bonded debt, assessment of taxes, 16-4527

water taxes, 16-4527

Examination by state examiner, fee, 5-904

Federal funds received under flood control act, use, 79-2101, 79-2102

Leases of county property, 16-1030

Photostatic or mechanical processes for records—See RECORDING

Planning and zoning—See PLANNING AND ZONING

Public camping and recreational park, appropriations for, 62-102

Rural improvement districts

assessment for lighting systems, 16-1629

cancellation of record of extinguished liability account, 16-1638

form of warrants and bonds, 16-1620

lighting systems

apportionment of costs, 16-1629

maintenance, 16-1629

Salaries of county officers, 25-605

Special examination by state examiner, fee, 5-910

Tax levy for county purposes, 16-1015

### COUNTY ATTORNEY

Labelling of paint and paint products, violations, duties, 3-1515

### COUNTY CLERKS

Articles of incorporation of credit union associations, filing with, 14-102

Fees, enumeration, 25-231

### COUNTY COMMISSIONERS

Cancellation of record of extinguished liability accounts, 16-1638

Dog licensing, 16-4601 to 16-4615—See DOGS

Erection and management of county buildings, 16-1008A

Extra sessions, 16-910

Fire protection in unincorporated areas

fire districts

annexation, 11-2008

contracts with cities, towns and private companies for service, 11-2008

creation, 11-2008

dissolution, 11-2008

division, 11-2008

tax levy for, 11-2008

trustees, 11-2010

fire insurance premium tax deposited into volunteer fireman's compensation fund, amount, 11-2030

Herd districts, duties concerning creation, 46-1501

Leases of county property, 16-1030

Meetings, 16-910

Road foreman or supervisor of county roads, appointment, 32-302

Tax levy for construction, maintenance and repair of public ferries, 32-1518

### COURTS

Proposed adoption of federal rules of civil procedure—See CIVIL PROCEDURE,

Federal rules, proposed adoption

## INDEX

References are to Title and Section numbers

### CREDIT UNIONS

- Articles of incorporation, 14-102
- Examination by state examiner, fee, 14-106
- Incorporation, 14-102
- Special examination by state examiner, fee, 5-910
- Supervision by state examiner, 14-106

### CRIMINAL OFFENSES

- Accident reports, failure to report accident involving death or personal injuries, 32-1202
- Alcoholic beverage bottle clubs, 4-172, 4-173
- Children, causing, contributing to or permitting law violations by, penalty, 10-617
- Coloration of wheat, oats, rye or barley
  - required when products treated with injurious or toxic substances, 94-35-271.1
  - sale or offering for sale in violation of act, 94-35-271.2
  - violation of act requiring coloration, misdemeanor, 94-35-271.3
- Commercial tow cars improperly equipped, 32-21-161, 32-21-162
- Consumer loan act, violations, 27-228
- Dog licensing act violations, misdemeanor, 16-4613
- Driving while license suspended or revoked, 31-155
- False personation to register at election, 23-503
- Fire drills, failure of teacher to instruct children concerning, penalty, 75-2301
- Fireworks regulatory act, penalty for violation, 69-2706
- Garbage and debris, dumping on or near highway or public recreational property, penalty, 32-1014
- Grain warehousemen, operation without license, 3-228
- Inducing engagement as advertising agency for sale of real property by misrepresentation of services, penalty, 94-1822
- Labelling requirements on paint and paint products, penalty for violation, 3-1511
- Lewd and lascivious acts upon children, penalty, 94-4106
- Lobbyist licensing and regulatory act, violations, 43-808
- Marriage, declaration of marriage without solemnization, violation of act concerning, 48-130.2
- Motorboat and vessel regulatory act, penalty for violations, 69-3518
- Narcotic drug act violations, penalties, 54-125
- Obtaining money for property or services by false pretenses, penalty, 94-1805
- Occupational disease act, violation, penalty, 92-1340
- Retail installment sales act, penalty for violation, 74-611
- Roadblocks established by peace officers, traveling through without stopping, penalty, 94-6033
- Schools, failure of parent, guardian or person having custody to require children to attend, penalty, 75-2901
- Seal on gasoline pumps and petroleum measuring devices, etc., removing or breaking, penalty, 90-129
- Television, operation of VHF booster or VHF translator system, penalty for violations of act, 70-407
- Uniform facsimile signatures of public officials act, violation with intent to defraud, felony, 59-1304
- Union interference with operation of sole proprietor or two man partnership retail or amusement establishment, 41-1805
- Wild turkey, taking in violation of act, misdemeanor, 26-512

### CRIMINAL PROCEDURE

- Disqualification of district judge
  - affidavit, 94-6913
  - calling in of judge to preside, 94-6913
  - number of changes authorized, 94-6913

## D

### DAIRIES AND DAIRY PRODUCTS

- Milk containers, measures for, 90-140
- Milk control board
  - assessment upon producer-distributors and distributors, 27-409
  - bonds required of distributors, 27-426



## INDEX

References are to Title and Section numbers

### DAIRIES AND DAIRY PRODUCTS (Continued)

#### Milk control board (Continued)

- definitions, 27-403
- distributors and producer-distributors, records required to be kept by, 27-416
- fair trade practices, rules and regulations governing, 27-414
- general powers, 27-405
- judicial review of orders, 27-428
- licenses
  - application for, 27-410
  - issuing, 27-409
  - persons required to obtain, 27-409
- local advisory board, duties, 27-427
- meetings, 27-404
- members, 27-404
- minimum prices
  - fixing, 27-407
  - hearing on, 27-407
  - notice of hearing on, 27-407
  - order for, 27-407
- natural marketing areas, designation, 27-406
- organization, 27-404
- per diem expenses, 27-404
- service of process upon, 27-429
- term of members, 27-404

### DAMAGES AND RELIEF

Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

### DISTRICT COURTS

- Adjournments, 93-316
- Calling of juries for trial of causes, 93-315
- Disqualification of district judge in criminal case
  - affidavit, 94-6913
  - calling in of judge to preside, 94-6913
  - number of changes authorized, 94-6913
- District comprised of two or more counties, holding of court continuously and simultaneously in each or any county, power, 93-316
- Fixing of terms where district comprises two or more counties, 93-315
- Judges
  - number, 93-302
  - salary, 93-303
- Jurisdiction
  - exclusive in proceedings concerning unlawful operation of motor vehicle by child under 18, 32-21-163 to 32-21-165
  - tort actions against state, 83-701
- Term of court, 93-315

### DOGS

- Damages to livestock or poultry, liability of owner of dog, 16-4614
- "Kennel" defined, 16-4602
- Licenses
  - application, 16-4602
  - collar and license tag required, 16-4601
  - county commissioners may provide for, 16-4602
  - disposition of fees, 16-4612
  - fee, 16-4603
  - kennel license
    - application, 16-4602
    - fee, 16-4603
  - license year, 16-4602
  - municipal license tag in compliance with act, 16-4604
  - removal of tag when dog under immediate control of owner, 16-4601
  - required, 16-4601

## INDEX

References are to Title and Section numbers

### DOGS (Continued)

"Owner" defined, 16-4615

Public inspection of applications on file, 16-4603

Seizure and impounding

contract with humane societies and other associations, authority for, 16-4607  
contract with municipal corporations for use of impounding facilities, authority, 16-4607

county commissioners, duties, 16-4606

county pound master, appointment, 16-4607

disposition of impounded dogs, 16-4608

dogs running at large without tags, 16-4605

dogs suspected of rabies or known to have bitten human or animal, retaining, 16-4608

fee for impoundment and keep, 16-4609

fees and charges as charged against county, 16-4610

fees, payment by owner claiming dog, 16-4610

failure to pay pound fee, abandonment, 16-4611

finest, disposition, 16-4612

Violation of act constitutes misdemeanor, 16-4613

### DRAINAGE DISTRICTS

Bonds

resolution for issuance of bonds or notes, 89-2501

signatures on, 89-2501

## E

### ELECTIONS

Absentee voting

application for ballot, 23-1302

form, 23-1303

ballots

form of return and affidavit, 23-1306

mailing by absent or physically incapacitated voter to county, city or town clerk, 23-1307

mailing to elector, 23-1306

marking and swearing to by elector, 23-1307

rejected ballots, 23-1311

deposit in box, 23-1313

duties of judges on election day, 23-1313

elector present on election day, duty, 23-1320

failure of elector present to go to polls, misdemeanor, 23-1320

federal post card application, 23-1303

form, 23-1403

judges of election, duty concerning on election day, 23-1311

method of marking ballot, 23-1307

notation on poll books, 23-1311

oath for elector in United States service, 23-1404

opening of envelopes containing ballots, 23-1313

persons who may make application, 23-1302

Alcoholic beverages

days retail beer establishments to be closed, 4-303

days retail establishments to be closed, 4-414

Bonds, creation or increase in municipal or school indebtedness, qualifications for voting, 84-4711

Canvass of returns, 23-1702

Certificate of election, issuing, 23-1808

County and city central committeemen, 23-929

County bond issue elections, electors, 16-2026

County clerks

compensation for election duties, 23-519

federal post card applications for absentee registration, duties concerning, 23-1405

preparation of precinct registers, 23-304

Disabled electors, judges may aid, 23-1213

Judges may aid disabled elector, 23-1213

## INDEX

References are to Title and Section numbers

### ELECTIONS (Continued)

- Method of voting, 23-1210
- National convention, delegates and alternates, selection, 23-1006
- Nonpartisan judicial ballot, arrangement on voting machine, 23-1608, 23-1608A
- Poll book, what constitutes, 23-1219
- Precinct register
  - compensation of county clerks for preparing, 23-519
  - omission of name from, remedy, 23-527
  - preparation, 23-304, 23-513
  - when not furnished city or town, 23-515
- Presidential electors, selection at state convention, 23-1006
- Primary nominating election
  - date for holding, 23-902
  - officers to be nominated, 23-902
  - parties to which act applicable, 23-909
  - poll books, precinct register and tally sheets, sealing and returning, 23-908
- Registration
  - absent electors in United States service
    - authorized, method, 23-1401
    - definition, 23-1402
    - federal post card application
      - form, 23-1403
      - use for obtaining ballot, 23-1403
    - oath for elector, 23-1404
  - cancellation
    - failure to vote, cancellation, 23-511
    - reregistration, 23-511
  - electors in United States service, 23-503
  - false personation, penalty, 23-503
  - federal post card application, classification by county clerk, 23-1405
  - method, 23-503
- Returns
  - abstract of election returns, transmitting to secretary of state, 23-1813
  - ballots in excess of names on poll books, procedure, 23-1703
  - filing of records, books, etc., after canvass of returns, 23-1715
  - judges, method of making, 23-1709
  - mode of canvass, 23-1702
  - retaining by county clerk until canvass, 23-1714
- School bond elections
  - notice of election, 75-3912
  - qualifications of voters, 75-3938
  - registration of electors, 75-3912
- School district additional tax levies, ballot concerning, conduct of election, 75-3804
- State convention
  - delegates and alternates to national convention, selection, 23-1006
  - presidential electors, selection, 23-1006
  - time for holding, 23-1006
- Supplies, county commissioners to furnish, 23-704
- Voting
  - disabled electors, judges may aid, 23-1213
  - list of voters, 23-1219
- Voting machines
  - arrangement of ballot on machine, 23-1608A
  - clerk to set up machine for use, 23-1608
  - method of setting up, 23-1608

### EMINENT DOMAIN

- Urban renewal, power of municipality, 11-3908

### EMPLOYERS AND EMPLOYEES

- Occupational disease act, 92-1301 to 92-1368

### ESTATES AND PROBATE PROCEEDINGS

- Devise or bequest to trustee of inter vivos trust created by testator, validity, 91-321
- Inheritance tax deductions, 91-4407



## INDEX

References are to Title and Section numbers

### EVIDENCE

- Accident reports confidential, 32-1213
- Certificate of compliance or noncompliance with provisions of occupational disease act, 92-1356
- Radar concerning motor vehicle violations, 32-2150.1

### EXECUTION

- Compensation under occupational disease act exempt from, 92-1329

## F

### FEDERAL RULES OF CIVIL PROCEDURE

- Proposed adoption—See CIVIL PROCEDURE, Federal rules, proposed adoption

### FEES

- Boiler engineer's license, 69-1512
- Cosmetology operators, 66-815
- County clerks, enumeration, 25-231
- Examination of public accountants, 66-1806
- Inspection of boilers, 69-1512
- Legislative proceedings, fee for receiving one complete set of, 43-902
- Recording marks and brands of livestock, 46-609
- Refrigerated lockers, license fee, 69-2804

### FIDUCIARIES

- "Fiduciary" defined, 86-706
- Transfer of stock by, corporation or transfer agent not bound to determine whether fiduciary breaching obligation, 86-705

### FIRE DRILLS

- Failure of teacher to instruct children concerning, penalty, 75-2301
- Fire alarms and gongs in schools, 75-2301
- Requirements in schools, 75-2301

### FIRE EXTINGUISHERS

- Requirements concerning, 69-1807

### FIREWORKS

- Exceptions from act, 69-2704
- "Fireworks" defined, 69-2701
- Permissible fireworks, 69-2701
- Prohibition against, 69-2701
- Public display
  - permits for, 69-2702
  - requirements concerning, 69-2702
- Violations of act, penalty, 69-2706

### FISH AND GAME

- Agents for selling licenses
  - compensation, 26-222
  - inspection of accounts, 26-222
- Definitions, 26-201
- Fish
  - methods of taking, 26-332
  - restrictions concerning possession and sale, 26-332
- Fish and game commission
  - meetings, 26-103
  - motorboat regulations—See MOTORBOATS
  - officers, 26-103
  - powers and duties, 26-104
  - principal offices, 26-103
  - quorum, 26-103
  - wild turkey tags, issuing, 26-510

## INDEX

References are to Title and Section numbers

### FISH AND GAME (Continued)

- Fishing reservoirs, rules and regulations concerning health, safety and protection, 26-104
- Licenses
  - classifications, 26-202.1
  - exceptions, 26-202.1
  - fees, 26-202.1
  - license agents, compensation, 26-222
  - powers of holders of, 26-202.1
  - "resident" defined for purposes of, 26-202.3
- Permits to nonresidents to remove fish or animals taken, 26-703
  - shipping permit, 26-703
- Seasons and bag limits, authority of commission concerning, 26-104
- Special licenses, 26-202.1
- Taxidermist
  - license, 26-907
  - records required to be kept, 26-907
- Wild turkey
  - attaching of tag to turkey taken, 26-511
  - fee for tag, 26-510
  - tags for, issuing, 26-510
  - violation of act concerning, misdemeanor, 26-512

### FOOD AND DRUGS

- Beef or veal, persons exempted from having meat inspected, stamped or being licensed, 46-504
- Refrigerated lockers—See REFRIGERATED LOCKERS

### FORESTS AND FORESTRY

- Bond of person engaged in cutting of forest products as to reduction or management of fire hazard, 28-404
- Enjoining violations concerning disposal of slash, 28-407
- Fire protection
  - classification of forest land for protection and assessment purposes, 28-109
    - cost of fire protection, 28-109
    - duty of owner, 28-109
  - compliance with protection requirements, what constitutes, 28-110
  - cost assessed against land to be paid and collected the same as taxes, 28-111
  - cost, determining, 28-111
  - fire protection plan, preparation, 28-111
  - "forest fire" defined, 28-103
  - "forest fire protection" defined, 28-103
  - "forest fire season" defined, 28-103
  - "forest land" defined, 28-103
  - "organized forest fire protection district" defined, 28-103
  - owner
    - definition, 28-103
    - owner not appearing upon public records, 28-104
  - "protection zone" defined, 28-103
  - "recognized agency" defined, 28-103
  - responsibility of actual owner of land, 28-104
- Reduction or management of fire hazards, 28-404
- Slash and debris
  - certificate of clearance, 28-412
  - contracts for reduction or management of fire hazards, state forester may enter into, 28-410
  - contracts with forest protective agencies, 28-411
  - disposal of slash, 28-407
  - hazard reduction agreement, purchaser of forest products to insure compliance, 28-406
  - injunctions where slash and debris not disposed of properly, 28-407
  - methods of reducing hazards, 28-411
  - reduction, 28-405
  - reduction or management of fire hazard, 28-404

## INDEX

References are to Title and Section numbers

### **FORESTS AND FORESTRY (Continued)**

- Slash and debris (Continued)
  - slash and debris along right-of-way, 28-405
  - state forester, supervision, 28-408
  - state forest fire wardens, delegation of powers to, 28-409
  - violation of provisions, penalty, 28-405
- State board of forestry
  - appointment of members, 28-101
  - creation, 28-101
  - meetings, 28-101
  - members, 28-101
  - powers, 28-105
  - term of members, 28-101

### **FRAUD**

- Obtaining money, property or service by false pretenses, 94-1805

## **G**

### **GARNISHMENT**

- Compensation under occupational disease act exempt from, 92-1329

### **GOVERNOR**

- Adjutant general, appointment, 77-117
- Chief budget officer, governor constitutes, 79-1012
- Contracts under western interstate corrections compact, power to enter into, 94-8023
- Director of budget, appointment, 79-1012
- Industrial accident board member, appointment, 92-104
- Members of board of plumbing examiners, appointment, 66-2403
- Method of selecting in event of enemy attack and person in line for succession unable to act, 82-1309
- President of state board of education, 75-104
- Salary, 25-501
- State board of forestry, members, appointment, 28-101
- Warden of state prison, appointment, 80-705

### **GUARDIANSHIPS**

- Guardian for receiving public welfare aid to dependent children payments, 71-509

## **H**

### **HIGHWAY PATROL**

- Captains, number, 31-105
- Patrolmen
  - probationary training, 31-105
  - qualifications, 31-105
  - salaries, 31-105
- Suspension, demotion or discharge of officer or patrolman
  - appeal, 31-105
  - causes, 31-105
  - charges against, how made, 31-105
  - hearing, 31-105
  - notice of hearing, 31-105
  - procedure at hearing, 31-105
  - suspension, demotion or reprimand by supervisor, 31-105
  - suspension pending rendition of decision, 31-105

### **HIGHWAYS, BRIDGES AND FERRIES**

- Controlled access facilities, limitation on commercial enterprises or structures on publicly owned right-of-ways, 32-2009.1
- Controlled access highway
  - definition, 32-2114
  - interstate sign manual, adoption for use on controlled access highways, 32-2133
- County commissioners, powers and duties concerning, 32-302



## INDEX

References are to Title and Section numbers

### HIGHWAYS, BRIDGES AND FERRIES (Continued)

- Distribution of state highway construction funds for federal aid highway systems, 84-1817
- Dumping of garbage or debris or refuse upon or near, penalty, 32-1014
- Ferries, county tax levy for construction, maintenance and repair of public ferries, 32-1518
- "Public highways" defined, 32-103
- Roadblocks
  - authority of peace officers to establish, 94-6030
  - existing laws concerning traffic control not affected, 94-6032
  - requirements for establishing, 94-6031
  - "temporary roadblock" defined, 94-6029
  - traveling through without stopping, penalty, 94-6033
  - warning and protecting of traveling public, 94-6031
- State highway commission
  - biennial reports, 32-1603
  - personal property, sale or trading, 32-1616
  - records, 32-1603
  - sale or trade of lands, procedure, 32-1616
  - sign manual for use on highways, adoption, 32-2133
  - traffic control devices, duties concerning, 32-2134

### HOMES FOR THE AGED

- Definitions, 69-2401

### HOUSING

- Emergency war and veterans' housing facilities, termination of operation, 35-414

## I

### INHERITANCE TAX

- Clear market value, tax imposed on, 91-4407
- Deductions, 91-4407

### INJUNCTIONS

- Consumer loan act violations, enjoining, 47-227
- Cosmetology licensing act, enjoining violations, 66-817

### INSANE AND MENTALLY ILL

- Hearing and examination
  - costs of proceeding and maintenance of person, order for, 38-214
  - determination of financial worth of person, 38-214
  - indigent persons, 38-214
  - notice, 38-214
  - relatives of person committed, liability for maintenance, 38-214
- Home for senile men and women
  - care and custody of patients, 38-1106
  - transfer of patients from state hospital to home, 38-1108
- State training school and hospital
  - citation to persons liable for maintenance to testify as to financial condition, 38-812
  - determination of financial ability of applicant to pay for maintenance, 38-809
  - establishment, 38-801
  - investigation of financial conditions of persons liable for support and maintenance of inmates presently in school, 38-809.1
  - liability of parents and relatives for support and maintenance, 38-809
  - purpose, 38-801

### INSTALLMENT SALES ACT

- Complaints regarding violations, 74-605
- Contents of installment contract, 74-607
- Contracts
  - acquisition by finance company, 74-608
  - containing in more than one document, when authorized, 74-607

## INDEX

References are to Title and Section numbers

### INSTALLMENT SALES ACT (Continued)

#### Contracts (Continued)

- delivery to buyer, 74-607
- refinancing, 74-610
- required contents, 74-607
- writing, requirements, 74-607

#### Definitions, 74-602

#### Delinquency charge, 76-607

#### Filling in of blank spaces after signing of contract, 74-607

#### Finance charges

- computation, method, 74-608
- maximum on motor vehicles, 74-608
- maximum on service and goods other than motor vehicles, 74-608

#### Finance company, acquisition of installment sales contract, 74-608

#### Insurance, requiring of buyer, when authorized, 74-607

#### Investigative power of superintendent, 74-605

#### License of sales finance company

- application, 74-603
- banks, trust companies or savings and loan associations, excepted, 74-603
- expiration, 74-603
- fee, 74-603
- license not transferable or assignable, 74-603
- posting of license on premises, 74-603
- required, 74-603
- suspension, revocation or failure to renew
  - grounds, 74-604
  - hearing, 74-604
  - judicial review, 74-604

#### Prepayment, refund, 74-609

#### Refinancing of contract, 74-610

#### Refunds on prepayments, 74-609

#### Rules and regulations, 74-606

#### Short title, 74-601

#### Subpoena power of superintendent, 74-606

#### Superintendent

- investigations, power, 74-605
- powers, 74-606

#### Transfer of equity in goods by buyer, 74-607

#### Violations of act, penalties, 74-611

#### Waiver of provisions of act unenforceable and void, 74-612

### INSURANCE

#### Consumer loan act, restrictions and limitations concerning with regard to consumer loans, 47-214

#### Fire insurance companies

- report of portion of premiums received from various cities, 11-1918
- state auditor to pay fire department relief associations the premium tax, 11-1919

#### Foreign insurers

- amount of taxes, fees and deposits to be same as home state requires of Montana insurers, 40-1334
- domicile, determination, 40-1336
- taxes to which retaliation not applicable, 40-1335

#### Installment sales act, provisions concerning obtaining of insurance by buyer, 74-607

#### Insurance companies

- license fee, 40-1302
- premium tax, 40-1302

#### Premium tax on fire insurance, 82-1231

#### Public grain warehousemen, insurance coverage required, 3-228

#### Workmen's compensation insurance subject to provisions of workmen's compensation act, 92-1005

### INTEREST

#### Consumer loan act—See CONSUMER LOAN ACT

### INVESTMENTS

#### Bonds issued for urban renewal projects, 11-3911

## INDEX

References are to Title and Section numbers

### IRRIGATION DISTRICTS

Bonds, signatures on, 89-1705

Examination of by state examiner, fee, 5-907

#### Joint operation

apportionment of costs and expenses, 89-1216  
authority for, 89-1209

#### board of control

bond of member, 89-1210  
employment of manager, 89-1214  
establishment of office, 89-1213  
examination by state examiner, 89-1215  
member at large, 89-1210  
members, 89-1210  
per diem and expenses, 89-1212  
powers and duties, enumeration, 89-1211  
records required to be kept, 89-1215  
vacancies occurring in, 89-1210

custodian of funds for, 89-1217

election on question, method of holding, 89-1218

existing contracts for joint operation, 89-1218

#### manager

bond, 89-1210  
employment, 89-1214

#### office, 89-1213

payments from funds, 89-1217

purpose of act, 89-1220

records and papers of, 89-1213

withdrawal from contract for joint operation, 89-1219

Special examination by state examiner, fee, 5-910

## J

### JUDGMENTS

Judgment rendered in tort action against state, 83-705

### JURIES AND JURORS

#### Jury lists

officers required to make, 93-1401  
time for making, 93-1401

Summoning of jurors, 93-1509

### JUSTICES' AND POLICE COURTS (CIVIL MATTERS)

Pleadings—See PLEADINGS (CIVIL) in Parent Volume

### JUSTICES OF THE PEACE

Practice of law, limitation, 16-3605

## L

### LABELS

Paints and paint products, 3-1510 to 3-1515—See PAINTS AND PAINT PRODUCTS

### LABOR

Labor activity interfering with operation of sole proprietor or two man partnership  
retail or amusement establishment

beer and liquor establishments excepted from act, 41-1804

“immediate family” defined, 41-1803

intent of act, 41-1801

unfair labor practice, 41-1802

violation of act, penalty, 41-1805

#### Vocational rehabilitation

cooperation of state board with federal government, 41-805

state treasurer designated as custodian for purposes of receipt and disbursement  
of rehabilitation funds, 41-806

“vocational rehabilitation” and “vocational rehabilitation services” defined, 41-801



## INDEX

References are to Title and Section numbers

### LANDLORD AND TENANT

Principal and income act, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

### LEGISLATIVE COUNCIL

Commission on interstate cooperation

council constitutes, 82-2112

council of state governments declared joint governmental agency, 82-2113

delegations and committees, 82-2112

function, 82-2112

### LEGISLATIVE PROCEEDINGS—DISSEMINATION

Fee for complete set of legislative proceedings, 43-902

Funds, accounting and use of, 43-902

"One complete set" defined, 43-901

"Person" defined, 43-901

Press, radio and television, excepted from act, 43-903

"Proceedings of the legislature" defined, 43-901

Public officials, exemption from act, 43-904

Single copies of matters, fee, 43-902

Status sheets, single copies, fee, 43-902

### LEGISLATURE

Emergency session of state senate for purpose of election of president pro tempore to assume governorship in event of enemy attack, 82-1309

Lobbying—See LOBBYING

### LIABILITY

Dog owner, liability for damages to livestock or poultry done by dog, 16-4614

### LICENSES

Dog licensing, 16-4601 to 16-4615—See DOGS

### LIVESTOCK

"Estrays" defined, 46-1005

Herd districts,

creation, 46-1501

dissolution, procedure, 46-1501

exclusion of area from district, 46-1501

location and size, 46-1501

procedure for creation, 46-1501

Marks and brands, fees for recording, 46-609

### LOANS

Consumer loan act, 47-201 to 47-228—See CONSUMER LOAN ACT

Real estate loans by banks, limitation on, 5-506

### LOBBYING

Briefs or statements, depositing copies with secretary of state, when, 43-806

Docket

appearance of name on docket before practice as a lobbyist, 43-806

definition, 43-802

name of lobbyist to be entered on, 43-804

preparation and keeping by secretary of state, 43-805

public record, inspection, 43-805

License of lobbyist

application, 43-803

eligibility for, 43-803

expiration, 43-803

fee, 43-803

required, 43-806

suspension or revocation of license, 43-803

"Lobbying" defined, 43-802

Lobbying privileges, suspension, when, 43-803

"Lobbyist" defined, 43-802

## INDEX

References are to Title and Section numbers

### LOBBYING (Continued)

- Lobby license fund, 43-803
- "Pecuniary interest" defined, 43-802
- Persons not required to be licensed or registered, 43-807
- Principal
  - definition, 43-802
  - entering name of lobbyist on docket, duty, 43-804
- Purpose of act, 43-801
- Secretary of state
  - preparation and keeping of docket, 43-805
  - weekly report to legislature, 43-805
- "Unprofessional conduct" defined, 43-802
- Violations of act, penalty, 43-808
- Written authorization to act, filing by lobbyist, 43-805

## M

### MARRIAGE

- Declaration of marriage without solemnization
  - authorized, 48-130
  - contents of declaration, 48-130
  - drafting of declaration, persons authorized, 48-130.1
  - penalty for violation of act, 48-130.2
- Premarital test certificate before issuance of marriage license, 48-134
- Proof of age before issuance of license, 48-134
- Proof of solemnization of marriage
  - acknowledgment and recording of declaration of marriage, 48-132
  - contents of written declaration, 48-131
  - method of proof when no record exists, 48-131
  - official record of marriage, 48-132

### MILITIA AND MILITARY

- Adjutant general, 77-117
- Assistant adjutant general, 77-117

### MILK CONTROL BOARD

See DAIRIES AND DAIRY PRODUCTS

### MINES AND MINING

- Mine foreman, duties, 50-501
- Minimum standards for roof support, 50-474
  - daily inspection by mine foreman, 50-501
  - violation of act, penalty, 50-475
- Safety standards for roof supports in coal mines, 50-474

### MONTANA RETAIL INSTALLMENT SALES ACT

Text of act, 74-601 to 74-612—See INSTALLMENT SALES ACT

### MOTORBOATS

- Accidents
  - accident report form, 69-3512
  - duty of operators to render aid, 69-3512
  - investigation by sheriff, 69-3512
- Boat liveries
  - record of persons hiring, required to be kept, 69-3507
  - safety equipment required, 69-3507
- Boats with operative federal approved numbering system, 69-3504
- Civil liability of owner, 69-3515
- Definitions, 69-3502
- Enforcement of act, 69-3517
- Legislative policy, 69-3501
- Liability of owner for negligence, 69-3515

## INDEX

References are to Title and Section numbers

### MOTORBOATS (Continued)

#### Numbering

- application for number, 69-3504
- change of address, 69-3504
- exemptions from, 69-3506
- fee for application, 69-3504
- manufacturers or dealers, 69-3504
- operation of unnumbered motorboats or vessels prohibited, 69-3503
- painting or attaching of number to boat, 69-3504
- period of time number to remain in effect, 69-3504
- transfer of ownership of boat, 69-3504

#### Operating, prohibited actions, 69-3508

#### Operation of unnumbered motorboats or vessels prohibited, 69-3503

#### Overloading prohibited, 69-3511

#### Overpowering prohibited, 69-3511

#### Penalty for violations of act, 69-3518

#### Prohibited operation, 69-3508

#### Restricted areas, 69-3510

#### Right-of-way, 69-3509

#### Rules and regulations, 69-3516

#### Safety equipment required, enumeration, 69-3505

#### Transfer of ownership, 69-3504

#### Transmittal of information, 69-3513

#### Violations of act, penalty, 69-3518

#### Water-skies or surfboards, hours during which operation prohibited, 69-3514

### MOTOR VEHICLES

#### Accident reports

- accident involving death or personal injury, 32-1202
  - failure to comply, penalty, 32-1202
- confidential nature of report, 32-1213
- coroner, report of, 32-1211
- definitions, 32-1201
- driver unable to report, effect, 32-1209
- duty upon striking fixtures or other property upon highway, 32-1206
- failure, 32-1210
- false reports, penalty, 32-1209
- form, 32-1210
- immediate notice of accidents, 32-1207
- law enforcement officer, report of, 32-1208
- report to highway patrol board
  - time for making, 32-1208
  - when required, 32-1208

#### Emergency vehicles, audible and visible signals on, 32-21-132

#### Equipment required on certain vehicles, 32-21-122

#### Equipment required on commercial tow cars, 32-21-161

#### penalty for violation, 32-21-162

#### Financial responsibility

- exceptions to requirement of security, 53-423
- suspension of license and registration, when, 53-422

#### License plates

- amateur radio operators, special plates, 53-106.2
  - affixing to car, 53-106.6
  - application, 53-106.3
  - fee, 53-106.3
  - issuance, 53-106.3
  - limit of one identical pair of plates for each operator, 53-106.4
  - revocation or expiration of radio license, effect, 53-106.6
  - sale or transfer of automobile, effect, 53-106.6
- assignment of numbers to counties, 53-106
- grace period for purchasers of new motor vehicles, 53-108
- series of plates, 53-106
- size and numbering, 53-106
- tax exempt vehicles, 53-106



## INDEX

References are to Title and Section numbers

### **MOTOR VEHICLES (Continued)**

- Local authorities, powers, 32-2131
- Maximum dimensions and weights, 32-1123
- Operation across public roads and highways not considered operation on roads, when, 32-2124.1
- Radar arrests
  - admissibility in evidence, 32-2150.1
  - arrest without warrant authorized, 32-2150.2
  - erection of signs as prerequisite to arrests, 32-2150.3
  - posting of signs in municipalities, 32-2150.3
  - use of radar authorized, 32-2150.1
- Registration
  - renewal, 53-108
  - suspension under financial responsibility act, 53-422
- Regulations of licensing and taxing extends only to vehicles operated on public roads, 32-2124.2
- Renewal of registration, 53-108
- Sales tax on new vehicles, 53-617
- School busses, flashing red lights on, 32-21-132
- Speed, trucks or truck-tractors, 32-1123
- Taxing of vehicles or fuels extends only to vehicles operated on public roads, 32-2124.2
- Traffic rules and regulations
  - "controlled access highway" defined, 32-2114
  - "laned roadway" defined, 32-2114
  - local authorities, powers, 32-2131
  - operation of vehicles across public roads and highways not considered operation on roads, when, 32-2124.1
  - "private road or driveway" defined, 32-2114
  - "roadway" defined, 32-2114
  - "sidewalk" defined, 32-2114
  - sign manual, state highway commission to adopt, 32-2133
  - signs, state highway commission to place and maintain, 32-2134
  - speed zones, establishment, 32-2145
  - "street or highway" defined, 32-2114
  - "through highway" defined, 32-2114
  - traffic control devices, 32-2134
- Trucks and trailers
  - marking on tractor, 53-615.1
  - three unit combinations, fees in lieu of gross weight fees, 53-615.1
  - weight violations, penalty and unloading of excess weight, 53-623
- Trucks transporting logs, required equipment, 32-21-122
- Unlawful operation by child under 18
  - court learning of unlawful operation, proceedings, 32-21-165
  - exclusive jurisdiction of district court, 32-21-163
  - impounding the vehicle, when, 32-21-163
  - penalty, 32-21-163
  - summoning of child, 32-21-164
- Violations of act, penalty, 53-623

## **N**

### **NARCOTIC DRUGS**

- Violation of narcotic drug act, penalty, 54-125

### **NUISANCES**

- Alcoholic beverage bottle clubs constitute, 4-173
- Buildings or land used for prostitution, gambling or narcotic drug transactions, abatement as nuisance, 94-1002

### **NURSING HOMES**

- Definitions, 69-2401

## **O**

### **OCCUPATIONAL DISEASE ACT**

- Administration of act, 92-1302

## INDEX

References are to Title and Section numbers

### OCCUPATIONAL DISEASE ACT (Continued)

- Aggravation of occupational disease by other disease, 92-1326
- Agreement by employee to waive compensation void, 92-1330
- American experience table of mortality, use, 92-1349
- Appeals under—See Judicial review, below
- Attachment, compensation exempt from, 92-1329
- Attorney general, duties, 92-1343
- Attorney's compensation, 92-1323
- Autopsy, 92-1318
  - expenses, 92-1320
- Benefits
  - burial expenses, 92-1324
  - compensation payable under act same as under workmen's compensation act, 92-1321
- Books, records and payrolls of employers to be open for inspection, 92-1358
- Burial expenses, 92-1324
- Claims
  - filing, 92-1312
  - forms, 92-1346
  - time for presenting, 92-1312
- Collateral attack on orders or decisions of board prohibited, 92-1361
- Common law defenses not available, 92-1339
- Common law right of action prohibited against employer electing to come under act, exceptions, 92-1331
- Compensation
  - amount of benefits and time period, same as workmen's compensation act, 92-1321
  - assignment, limitation, 92-1329
  - date for beginning of payment of compensation under act, 92-1338
  - determination of amount of compensation and time and method of payment, 92-1336
  - diminution because of payments under workmen's compensation act, 92-1333
  - exceptions, 92-1311
  - exemption from attachment, garnishment and execution, 92-1329
  - false representation by employee as preventing, when, 92-1342
  - liability of employer for, 92-1366
  - limitations, 92-1311
  - methods for employers to secure compensation to their employees, 92-1334
  - partial disability, no compensation for, 92-1322
  - payment, 92-1311
  - payments due to child under 18 years of age or incompetent, 92-1337
  - persons receiving public welfare benefits not entitled to compensation, 92-1332
  - vested rights in prohibited, 92-1367
  - wilful misconduct, self-exposure or disobedience of orders of board as precluding, 92-1328
- Compensation plans, 92-1334
- Construction of act, 92-1368
- Costs and disbursements in proceedings and hearings, 92-1357
- Death
  - autopsy, 92-1318
    - expenses, 92-1320
  - burial expenses, 92-1324
  - disease other than silicosis as cause, report of member of medical committee, 92-1317
  - notice of, 92-1313
  - silicosis as cause of death, report of pulmonary specialist, 92-1316
- Deduction from wages of part of premium constitutes misdemeanor, 92-1341
- Defenses not available to employer, 92-1339
- Definitions, 92-1303
- Depositions, power to take, 92-1351
- Diseases which constitute occupational diseases, enumeration, 92-1304
- District court, powers concerning enforcement of production of testimony, 92-1355
- Employees
  - agreement to waive compensation or pay premium void, 92-1330
  - applicants for employment who upon medical examination are found afflicted with occupational disease, employer not liable, when, 92-1330
  - right of employee to reject provisions of act, notice of, posting, 92-1309

## INDEX

References are to Title and Section numbers

### OCCUPATIONAL DISEASE ACT (Continued)

#### Employers

- books, records and payrolls to be open to inspection, 92-1358
- compensation plan No. 1, direct payment to employee, 92-1334
- compensation plan No. 2, insuring liability, 92-1334
- compensation plan No. 3, occupational disease compensation fund, 92-1334
- deducting from wages part of premium, misdemeanor, 92-1341
- liability for payment of compensation, 92-1366
- liability where person employed by successive employers, exception, 92-1310

Evidence, certificate and certified copies as, 92-1356

Execution, compensation exempt from, 92-1329

Execution of process, fees, 92-1353

Expenses, 92-1357

False representation by employee as to prior diseases, effect, 92-1342

Garnishment, compensation exempt from, 92-1329

Hearings after receipt of notice and medical report, 92-1315

Hearings and investigations, conduct of, 92-1350

Hearings, findings and awards by board, 92-1335

#### Industrial accident board

- administering oath, certifying official acts, issuing subpoenas, etc., power, 92-1354
- administration of act, 92-1302
- claim forms, prescribing, 92-1346
- collateral attack on orders or decisions of prohibited, 92-1361
- determination of amount of compensation and method and time of payment, 92-1336
- hearings, findings and awards by, 92-1335
- issuance of writs and process, power, 92-1353
- jurisdiction to hear disputes and controversies, 92-1359
- members not to receive additional compensation for administering act, 92-1302
- powers necessary and convenient, authority concerning, 92-1352
- power to administer oath, issue subpoenas, compel attendance of witnesses, etc., 92-1347
- presumption as to legality of rules, orders, findings, etc., 92-1360
- right to sue and be sued, 92-1344
- rules and regulations, adoption, 92-1345
- service of process on, 92-1344
- traveling expenses, 92-1302

Information furnished to board confidential, 92-1348

#### Judicial review

- appeal to district court
  - appearance, 92-1364
  - method of taking, 92-1362, 92-1363
  - time for, 92-1362
- appeal to supreme court, 92-1365
- collateral attack upon orders and decisions of board prohibited, 92-1361
- jurisdiction of board to hear disputes and controversies, 92-1359

#### Lump sum settlements

- exception as to amount of attorney's compensation, 92-1323
- prohibition against, 92-1323

Medical and hospital expenses, 92-1325

#### Medical examination

- cost, payment, 92-1320
- periodic medical examination, 92-1319
- procedure, 92-1315
- re-examination, 92-1315
- report, 92-1315

#### Medical panel

- appointment, 92-1314
- composition, 92-1314
- medical association, certifying nominees, 92-1314

Notice of disability or death, time for giving, 92-1313

Notice of employee's right to reject provisions of act, posting of, 92-1309

Occupational disease compensation fund, 92-1334

#### Occupational diseases

- aggravation by other disease, 92-1326



## INDEX

References are to Title and Section numbers

### **OCCUPATIONAL DISEASE ACT (Continued)**

- Occupational diseases (Continued)
  - arising out of employment, when, 92-1305
  - enumeration, 92-1304
- Partial disability, no compensation for, 92-1322
- Payments due to child under 18 or to person adjudged incompetent, method of making, 92-1337
- Periodic medical examinations, 92-1319
- Persons receiving benefits under public welfare act not entitled to compensation benefits, 92-1332
- Persons subject to act, 92-1307
- Regular employees, 92-1306
- Rights to compensation under act exclusive remedy, when, 92-1308
- Short title, 92-1301
- Silicosis as cause of death, report of pulmonary specialist, 92-1316
- Silicosis with complication of tuberculosis, 92-1327
- Subcontractors, 92-1306
- Successive employers, 92-1310
- Violation of act, penalties, 92-1340
- Wilful misconduct, wilful self-exposure or disobedience precludes compensation, 92-1328
- Witnesses before board, fees and mileage, 92-1354
- Witness fees and mileage, 92-1354

### **OIL AND GAS**

- Drilling, cores and cuttings to be made available to commission, 60-144
  - confidential nature, 60-144

### **OPERATORS' AND CHAUFFEURS' LICENSES**

- Driving while license suspended or revoked, penalty, extension of period of suspension or revocation, 31-155
- Person holding chauffeur's license not to have operator's license, 31-125
- Required, 31-125
- Resident, when person deemed resident for purposes of act, 31-125
- Revocation, failure to report accident involving death or personal injury, 32-1202
- Revocation or suspension, child under 18 unlawfully operating motor vehicle, 32-21-163

### **OPTOMETRY**

- Annual report of board of examiners, 66-1311
- Applicants for registration
  - examination, 66-1305
  - nonresidents, 66-1305
  - qualifications, 66-1305
- Certificate of registration, fees, 66-1305
- Compensation of examiners, 66-1311
- Effect of failure to renew registration, 66-1307
- Fee for renewal<sup>a</sup> of registration, 66-1307
- Fees, 66-1307
- Physicians and surgeons, act not applicable to, 66-1316
- "Practice of optometry" defined, 66-1301
- Public agencies, acceptance of services of licensed optometrist, 66-1317
- Renewal of registration, 66-1307
- Unlawful acts, 66-1302

## **P**

### **PAINTS AND PAINT PRODUCTS**

- Analysis, 3-1514
- Contents of label, 3-1510
- County attorney, duties, 3-1515
- Enforcement of regulatory act, 3-1513
- Intrastate transactions, application of act, 3-1510
- Labelling requirements, 3-1510
- Laboratory for analysis, 3-1514
- Penalty for violations, 3-1511
- Possession of improperly labelled products as prima facie evidence, 3-1512

## INDEX

References are to Title and Section numbers

### PARKS

- Dumping of garbage or debris on or near public recreational property, penalty, 32-1014
- Public camping and recreational purposes
  - county appropriation for authorized, 62-102
  - use exclusive, 62-102

### PARTITION

- Personal property
  - county in which action to be brought, 93-6301.1
  - partition or sale authorized, 93-6301.1
  - procedure, 93-6301.2

### PEACE OFFICERS

- Law enforcement academy, 75-5201 to 75-5208—See COLLEGES AND UNIVERSITIES, Law enforcement academy
- Reports of accidents investigated, 32-1208
- Roadblocks, establishing, 94-6029 to 94-6033—See HIGHWAYS, BRIDGES AND FERRIES, Roadblocks

### PHARMACIES

- Certified pharmacies, 66-1508
- State board of pharmacy
  - licensing of certified pharmacy, 66-1508
  - licensing of stores other than pharmacies for sale of ordinary household or medicinal drugs, 66-1508
  - suspension or revocation of store or pharmacy license, 66-1508

### PHYSICIANS AND SURGEONS

- Optometry regulatory act not applicable to, 66-1316

### PLANNING AND ZONING

- Act not to prevent recovery and use of mineral, forest or agricultural resources, 11-3853
- City-county board
  - citizen members of, qualifications, 11-3812
- City planning board
  - composition, 11-3804
- County commissioners, when authorized to exercise powers granted to cities, 11-2710
- Master plan
  - contiguous unincorporated areas, including in, 11-3830
  - plats of subdivisions conforming with master plan, 11-3842
  - preparation, 11-3830
- Planning board, exercise of powers of zoning commission, 11-3853 /
- Plats of subdivisions conforming with master plan, 11-3842
- Powers of city and county regarding building and zoning regulations, 11-3852
- Submission of urban renewal plan to commission, 11-3906

### PLUMBERS

- Act not to require employment of licensed plumbers, 66-2415
- Board of plumbing examiners
  - appointment of members, 66-2403
  - board constitutes state plumbing board, 66-2413
  - duties, 66-2403
  - members, 66-2403
  - term of members, 66-2403
- Declaration of public interest, 66-2412
- Expenses relating to act concerning minimum standards, defraying, 66-2418
- Minimum standards
  - exceptions from act, 66-2426
  - inferior installations, restraining, 66-2417
  - municipal ordinances, power to adopt rules and regulations, 66-2424
  - prescribing, 66-2416

## INDEX

References are to Title and Section numbers

### PLUMBERS (Continued)

#### Minimum standards (Continued)

- revocation or suspension of license for work below minimum, 66-2419
  - hearing, 66-2422
  - initiation, 66-2420
  - judicial review, 66-2423
  - procedure, 66-2420
  - process, service, 66-2421
- state plumbing code, adoption, 66-2416
  - effective date, 66-2425

#### State plumbing board

- board of plumbing examiners constituted, 66-2413
- chairman, 66-2414
- employees, 66-2414
- rules and regulations, 66-2414

### PRESUMPTION

- Legality of rules, orders, findings, etc., of industrial accident board under occupational disease act, 92-1360

### PRINCIPAL AND INCOME ACT

- Act to govern ascertainment of principal and income and apportionment of receipts and expenses, 67-1902
- Animals, offspring of, 67-1908
- Application to estates created after effective date, 67-1916
- Bonds or obligations, 67-1906
- Business, operation of, 67-1907
- Coverage of act, 67-1902
- Death of tenant between payment dates, apportionment, 67-1904
- Definitions, 67-1901
- Delayed income, 67-1911
- Depletion of property, 67-1910
- Expenses
  - apportionment, 67-1912
  - expenses where no trust created, 67-1913
  - improvement, 67-1913
- Income
  - corporate dividends, when, 67-1905
  - definition, 67-1901
  - receipts constitute, 67-1903
- Interpretation of act, uniformity, 67-1914
- Natural resources, 67-1909
- Net profits derived from operation of business, 67-1907
- Offspring of animals, 67-1908
- Principal
  - change in form of investment of unprofitable principals, 67-1911
  - corporate dividends, when, 67-1905
  - definition, 67-1901
  - loss or gain on sale of bonds or obligations, 67-1906
  - property subject to depletion, 67-1910
  - receipts constitute, 67-1903
- "Remainderman" defined, 67-1901
- Severance of natural resources, 67-1909
- Short title of act, 67-1915
- Stock dividends, 67-1905
- "Tenant" defined, 67-1901
- "Trustee" defined, 67-1901
- Uniform principal and income act, 67-1915

### PRISONS AND PRISONERS

- Continuation of work by prisoner in county jail, 94-7835 to 94-7841—See SENTENCES,
- Confinement with parole during employment hours
- Inmates of state prison, use of state correspondence school, 75-2006



## INDEX

References are to Title and Section numbers

### PRISONS AND PRISONERS (Continued)

#### State prison

##### custodial officers

appointment, 80-707.1

duties, 80-707.2

merit system for promotions and appointments, 80-707.4

probationary period for lieutenants and captains, 80-707.4

probationary training, 80-707.3

qualifications, 80-707.2

suspension, demotion or discharge

appeals to board of state prison commissioners, 80-707.5

grounds, 80-707.5

##### employment of convicts

authority, 80-720

wages for services, 80-720

industrial revolving fund, 80-720

##### warden

appointment, 80-705

duties, 80-706

removal, 80-705

retirement age, 80-705

salary, 80-705

Western interstate corrections compact, 94-8019 to 94-8023—See SENTENCES,  
Western interstate corrections compact

### PROPERTY

#### Pension trusts

statutory and common law limitations inapplicable to, 67-423

validity, 67-424

#### Personal property

partition or sale authorized, 93-6301.1

county in which action shall be brought, 93-6301.1

procedure, 93-6301.2

Principal and income act, 67-1901 to 67-1916—See PRINCIPAL AND INCOME  
ACT

#### Real property

inducing engagement as advertising agency for sale of real property by mis-  
representation of service, penalty, 94-1822

persons who may purchase state lands, 81-908

#### Restraints against alienation

future interests suspending power of alienation, void, 67-407

interest, when required to vest, 67-406

limit of length of time, 67-406

### PUBLIC EMPLOYEES' RETIREMENT ACT

Compulsory retirement, 68-802

Definitions, 68-102

Disability retirement allowance, 68-901

Enumeration of ineligible persons, 68-203

Fixing of rates of contribution, 68-701

Management of retirement fund, 68-701

Minimum guarantee, 68-901

Persons ineligible for membership in system, 68-203

Retirement at age 65 or over without accumulated ten years service, election of  
service retirement allowance, 68-802

Retirement fund, management, 68-701

Service retirement allowance, 68-901

#### Voluntary retirement

age and service requirement, 68-801

employment in state service after retirement, 68-801

### PUBLIC FINANCE

#### Bond validating act

definitions, 79-2002

## INDEX

References are to Title and Section numbers

### **PUBLIC FINANCE** (Continued)

Bond validating act (Continued)

short title, 79-2001

validating provisions, 79-2003

County bond issues

election

notice, 16-2026

preparation of lists of registered electors, 16-2026

qualified voters, 16-2026

form and execution of bond, 16-2033

Facsimile signatures of public officials—See **PUBLIC OFFICERS AND EMPLOYEES**, Facsimile signatures of public officials

Limitation on indebtedness of city, town, township, school district or high school district, XIII, 6

Moneys received from federal government under flood control act

distribution to counties, 79-2101

expenditure of funds by counties, 79-2102

State controller—See **STATE CONTROLLER**

State finance

budget of contemplated expenditures as requirements before federal aid may be received, duty of director of budget concerning, 82-112

expert on financial matters, appointment by board of land commissioners, salary for services, 79-1202

funds required to be invested as part of Montana trust and legacy fund, 79-1202

long term investment funds, 79-1202

refunding bonds or debentures, nature of issuance, 79-1802

short term investment funds, 79-1202

state budget act

blanks for preparation of budget estimates

distribution, 79-1013

duty of department, institutions and agencies, 79-1013

budget director

duties, 79-1017

inquiries and investigations by, 79-1016

power to demand and receive information from state departments and officers, 79-1018

budget message, 79-1015

budget of contemplated expenditures required by federal agency as condition to federal aid, duty of director of budget to submit budget to governor, 82-112

detailed budget estimate, 79-1015

director of budget, appointment, 79-1012

division and parts of budget submitted to legislature, 79-1015

governor constituted chief budget officer, 79-1012

inquiries and investigations by budget director, 79-1016

preliminary budget, preparation, 79-1014

proposed budget bill, 79-1015

submission of budget to legislature, 79-1015

submission of preliminary budget to governor and governor elect, 79-1014

### **PUBLIC HEALTH**

Tuberculosis—See **TUBERCULOSIS**

### **PUBLIC LANDS**

State highway commission, power to sell or trade, 32-1616

### **PUBLIC OFFICERS AND EMPLOYEES**

Custodial officers at state prison—See **PRISONS AND PRISONERS**, State prison

Facsimile signatures of public officials

“authorized officer” defined, 59-1301

definitions, 59-1301

effect of facsimile signature, 59-1302

facsimile seal, use, 59-1303

“facsimile signature” defined, 59-1301

## INDEX

References are to Title and Section numbers

### **PUBLIC OFFICERS AND EMPLOYEES (Continued)**

#### Facsimile signatures of public officials (Continued)

"instrument of payment" defined, 59-1301

"public security" defined, 59-1301

requirement before facsimile signature may be used, 59-1302

short title of act, 59-1306

uniformity of interpretation, 59-1305

use of facsimile signature in lieu of manual signature, 59-1302

violations of act with intent to defraud, felony, 59-1304

Public employees' retirement act—See **PUBLIC EMPLOYEES' RETIREMENT ACT**

#### Social security coverage

authorized, 59-1103

federal-state agreement, 59-1103

payment for, 59-1103

persons excepted from act, 59-1108

plans for coverage of employees of political subdivisions, 59-1104

services covered by, 59-1103

### **PUBLIC PROPERTY**

Coal leases, county property, term, 16-1030

Lease of county property, 16-1030

### **PUBLIC REPORTS**

Distribution, 59-704

### **PUBLIC SERVICE COMMISSION**

Licensing of VHF booster or VHF translator systems for television—See **TELEVISION**

### **PUBLIC WELFARE**

#### Aid to dependent children

amounts received by recipients as enrolled member of Indian tribe, effect, 71-509

changes in amount of assistance, 71-509

guardianship, creating, when, 71-509

periodic reconsiderations in amount of assistance, 71-509

#### Aid to needy blind

amounts received by recipients as enrolled member of Indian tribe, effect, 71-607

application, 71-607

investigation of application, 71-607

#### Old age assistance

increase of income of recipient

cancellation or change in amount, 71-410

duty to notify county department of, 71-410

federal government, share in amounts recovered from recipients, 71-410

Persons receiving benefits under public welfare not entitled to compensation under

occupational disease act, 92-1332

Silicosis payments, amount, 71-1004

#### Totally disabled persons

amounts received by recipients as enrolled member of Indian tribe, effect, 71-1207

investigation of applications, 71-1207

## **R**

### **RADAR**

Radar arrest cases—See **MOTOR VEHICLES**, Radar arrests

### **RAILROADS**

Railroad commission, equipment of cars, trains and engines and health and sanitation, rules concerning, powers, 72-150

Railroad commissioner, salary, 25-501

### **RECEIVERS**

Appointment for consumer loan licensees, 47-227



## INDEX

References are to Title and Section numbers

### RECORDING

- Fees for recording of marks and brands, 46-609
- Method of recordation of certain instruments, when proper, 16-2903
- Microfilm, 16-2903
- Photostatic or other mechanical processes
  - admissibility into evidence, 16-2430
  - authorized in counties, 16-2428
  - enlargement, 16-2430
  - reproduction as public record, 16-2429
  - storage of copy, 16-2431
  - substitution of reproduction for original, 16-2429

### RECORDS

- Photostatic or mechanical processes in counties—See RECORDING

### REFRIGERATED LOCKERS

- Definitions, 69-2802

#### License

- annual license fee, 69-2804
- application, 69-2803
- expiration, 69-2804
- half year licenses, 69-2804
- issuance, 69-2803
- renewal of license, 69-2804
- required, 69-2803

### ROADBLOCKS

- See HIGHWAYS, BRIDGES AND FERRIES, Roadblocks

### RULES OF CIVIL PROCEDURE

- Proposed adoption of federal rules of civil procedure, 93-221 to 93-233—See CIVIL PROCEDURE, Federal rules, proposed adoption

## S

### SALARIES

- Adjutant general, 77-117
- County officers, 25-605
- District court judges, 93-303
- Elected state officials, 25-501
  - salary in full for all services, exceptions, 25-501.1
- Highway patrolmen, 31-105
- Industrial accident board appointed member, 92-104
- Warden of state prison, 80-705

### SALES

- Exemptions from public auction law, 66-229
- Retail installment sales act, 74-601 to 74-612—See INSTALLMENT SALES ACT

### SALES TAX

- New passenger vehicles, 53-617

### SANITARIANS

- Appeal procedure, 69-3408

#### Council

- establishment, 69-3402
- issuance of certificate of registration to applicants, 69-3403
- meetings, 69-3402
- officers, 69-3402
- register, duties to keep, 69-3402
- service of process upon, 69-3409
- terms of members, 69-3402

- Definitions, 69-3401

- Penalty for violation of act, 69-3406

## INDEX

References are to Title and Section numbers

### **SANITARIANS (Continued)**

Register, council to keep, 69-3402

#### **Registration**

application fee, 69-3404

applications for, 69-3403

issuance of certificate, 69-3403

operating as without being registered prohibited, penalty, 69-3406

reciprocity registration, 69-3407

renewal fee, 69-3404

revocation or suspension

grounds, 69-3405

hearing, 69-3405

power of council, 69-3405

term of certificate, 69-3403

### **SAVINGS AND LOAN ASSOCIATIONS**

#### **Retail installment sales act**

compliance with provisions of act other than licensing required, 74-603

licensing under not required, 74-603

### **SCHOOLS**

#### **Abandonment of school districts**

attachment to continuous district, 75-1522

county superintendent, duties concerning, 75-1522

funds and debts of, 75-1522

school buildings, 75-1522

#### **Adult education classes, tax levy for, 75-1633**

#### **Attendance**

ages for which attendance required, 75-2901

attendance outside of district of residence, 75-1630

compulsory attendance, 75-2901

excuses, 75-2901

#### **Bond elections**

forms of bond, 75-3919

notice of election, 75-3912

persons entitled to vote, 75-3912

qualifications of voters, 75-3938

registration, 75-3912

registration of bond, 75-3942

specification of bond, 75-3942

#### **Budget system, emergency budgets, 75-1716**

#### **Distribution of state public school equalization fund, method, 75-3612**

#### **Elections on additional tax levies, ballot, conduct of election, 75-3804**

#### **Fire drill, 75-2301**

#### **Foundation program, 75-3612**

#### **Handicapped children**

reimbursement by state for special classes, 75-5003

special classes for educable mentally retarded children or physically handicapped children, 75-5003

#### **High schools**

additional trustees, when authorized, 75-4601

attendance of pupil outside county of residence, 75-4230

board of trustees of county high schools

appointment, when, 75-4103

election

districts for election, 75-4103

nominations, 75-4103

time for holding, 75-4103

when authorized, 75-4103

general powers, 75-4231

number of members, 75-4103

term, 75-4103

vacancy deemed for failure to attend three consecutive meetings of board, 75-4103

## INDEX

References are to Title and Section numbers

### SCHOOLS (Continued)

#### High schools (Continued)

- examination of county free high schools, fee for, 5-906
- public works program, 75-4601
- special tax levy for, 75-4609
- tuition for attendance outside county of pupil's residence, 75-4230

#### Instruction in fire drills, 75-2301

Limitation on indebtedness of school districts and high school districts, XIII, 6

#### School districts

- special examination by state examiner, fee, 5-910

#### State board of education

- donations of land for western Montana branch experiment station, authority to receive, 75-710.3
- donations of money, implements, livestock, etc., for use of western Montana branch experiment station, authority to receive, 75-710.4
- members, 75-104
- officers, 75-104
- powers and duties, 75-107

#### State correspondence school

- creation, 75-2006
- fees, 75-2006
- persons to whom services available, 75-2006

#### Superintendent of public instruction

- department of public instruction, 75-1303
- staff, 75-1303

#### Teachers

- administrative and supervisory certificates, 75-2516
- certificates for teaching
  - classes, 75-2516
  - duration, 75-2520
  - emergency authorization, 75-2522
  - existing certificates, 75-2518
  - existing holders of elementary school standard certificate, 75-2518
  - renewal, 75-2520
- classes of certificates for teaching, 75-2516
- emergency authorization to teach, 75-2522
- failure to instruct children in fire drills, penalty, 75-2301
- professional certificate, 75-2516
- provisional certificates, 75-2516
- standard certificate for teaching, 75-2516
- vocational recreation and adult education certificates, 75-2516

#### Teachers' retirement system

- benefits, 75-2707
- definition, 75-2701
- method of financing, 75-2709
- provisions for discontinuing former system, 75-2712

#### Trustees

- bookkeeping and auditing of extracurricular funds, 75-1632
- duties, 75-1632

### SECRETARY OF STATE

Articles of incorporation of credit union association, filing with, 14-102

Lobbyist, duties concerning—See LOBBYING

Salary, 25-501

### SENTENCES

#### Confinement with parole during employment hours

- authorized, when, 94-7835
- continuation of employment by prisoner, 94-7836
- earnings of prisoner, collection by prisoner, disposition, 94-7837
- persons confined to county jail, 94-7835
- persons guilty of contempt, act applicable to, 94-7841
- reduction of sentence up to one-fourth of full term, authority of court, 94-7838



## INDEX

References are to Title and Section numbers

### SENTENCES (Continued)

- Confinement with parole during employment hours (Continued)
  - request of county attorney and sheriff and consent of convicted person, 94-7835
  - violations of conditions of sentence, 94-7839
  - work arrangement in another county, 94-7840
- Western interstate corrections compact
  - adoption, 94-8019
  - commitment or transfer of inmate to institution outside state, authority, 94-8020
  - contents of compact, 94-8019
  - governor, power to enter into contracts, 94-8023
  - hearings requested by other states, power of board of pardons and paroles and board of prison commissioners to hold, 94-8022
  - purposes of compact, effectuation, 94-8021

### SERVICE OF PROCESS

- Attorney general, service upon in tort actions against state, 83-704
- Industrial accident board under occupational disease act, service of process on, 92-1344
- Milk control board, method of serving, 27-429
- Sanitarians registration council, service on, 69-3409

### SHERIFFS

- Accident report forms for motorboat or vessel accidents, 69-3512
- Summoning of jurors, 93-1509

### SIGNATURES

- Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

### SOIL CONSERVATION

- Corrective methods, declaration of policy, 76-102
- Legislative policy, 76-102
- Soil conservation districts
  - body corporate, district constitutes, 76-108
  - chairman, 76-107
  - change of name, procedure, 76-117
  - combination of districts, 76-117
  - division of districts, 76-117
  - employees, 76-107
  - flood control measures, 76-108
  - powers, enumeration, 76-108
  - supervisors
    - number, 76-107
    - term of office, 76-107
    - vacancy among, filling, 76-107

### STATE AUDITOR

- Salary, 25-501

### STATE BOARD OF EQUALIZATION

- See TAXATION, State board of equalization

### STATE CAPITOL

- Emergency temporary seat of government in event of enemy attack, designation, method, 82-1310
- Unemployment compensation commission building
  - architect, employment, 78-1002
  - bids for construction, 78-1003
  - bond issue authorized, 78-1001
  - bonds
    - amount authorized, 78-1004
    - interest, 78-1005
    - interest and sinking fund, 78-1008
    - principal and interest, payment, 78-1007

## INDEX

References are to Title and Section numbers

### STATE CAPITOL (Continued)

Unemployment compensation commission building (Continued)

bonds (Continued)

provisions, 78-1005

purchase by state board of land commissioners, 78-1009

registration, 78-1006

sale, 78-1006

term, 78-1005

budget act inapplicable, 78-1010

contractor's bond, 78-1003

location, 78-1001

### STATE CONTROLLER

Duties, 82-109

Examination into audits and reports, 82-110

Expenditure control, 82-109

Uniform accounting system, 82-110

### STATE DEPARTMENTS AND BOARDS

Facsimile seal, use authorized, 59-1303

Public reports, distribution, 59-704

### STATE EXAMINER

Approval of articles of incorporation of credit union association, 14-102

Audit of extracurricular funds of schools, 75-1632

Banks, investment companies and trust companies, fee for examination, 5-908

Building and loan associations, fee for examination, 5-909

Cities and towns, examination of, fee, 4-905, 82-1008

Counties, fee for examination, 5-904

County free high schools, fee for examination, 5-906

Credit unions, examination, fee, 14-106

Irrigation districts

fee for examination, 5-907

joint operations, examination by state examiner, 89-1215

School districts, examination of, 82-1008

Special examinations, fee, 5-910

University of Montana

examination of accounts, duty, 82-1014

fiscal officers and employees to aid in examination, 82-1015

report of examination and audit, 82-1016

### STATE LANDS

Amount persons may purchase, 81-908

Leases of grazing lands

additional computation for specific period, 81-433.1

formula for fixing rental, 81-433

Persons authorized to purchase, 81-908

### STATE OF MONTANA

Tort actions against

act not to affect actions arising under workmen's compensation act, 83-707

appeals

bond not to be required of state, 83-703

right of, 83-703

bonds not to be required of state, 83-703

compromise and settlement, power, 83-704

immunity for claims in excess of collectible insurance, 83-706

insurance, effect, 83-706

judgment as obligation of state, 83-705

jurisdiction of district courts, 83-701

limitation of liability of state to extent of insurance coverage, 83-701

procedure and practice, 83-702

service of process upon attorney general, 83-704

state not to be liable for interest prior to judgment nor for punitive damages, 83-701

## INDEX

References are to Title and Section numbers

### STATE ORPHANS' HOME

Change of name to Montana Children's Center, 10-101.1

### STATE TREASURER

Salary, 25-501

### STATE TUBERCULOSIS SANITARIUM

Admission of patients to, 80-210.1

### SUPERINTENDENT OF PUBLIC INSTRUCTION

Salary, 25-501

### SUPREME COURT

Appeals to, bond to stay execution of judgment pending appeal, 93-8007

Appointment of commission to prepare rules of civil procedure for adoption, 93-222

Proposed adoption of federal rules—See CIVIL PROCEDURE, Federal rules, proposed adoption

Salary of chief justice and justices, 25-501

## T

### TAXATION

Barrelage tax on beer, 4-317

Change in assessment of property assessed to any particular person, notice of intention, 84-710

Changes in assessed valuation of classes of property, notice of contemplated action, 84-710

Cities and towns

levy for fund for payment of police officers on reserve list, 11-1823

tax levy for fire department relief association disability and pension fund, 11-1912

Corporation license tax

amount, 84-1501

"corporation" defined, 84-1501

deductions allowable in computing income, 84-1502

election by small business corporation not to be subject to tax

definitions, 84-1501.1

effect of election, 84-1501.2

"electing small business corporation" defined, 84-1501.1

limitations upon right to election, 84-1501.2

method of making election, 84-1501.2

"small business corporation" defined, 84-1501.1

termination of election, 84-1501.2

validity of election, 84-1501.2

organizations exempt from tax, 84-1501

County water district taxes—See COUNTIES, County water districts

Exemptions, property held by municipality under urban renewal law, 11-3912

Gasoline dealers and distributors

change in rate of tax, effect of gasoline in storage or transit, 84-1802.1

definitions, 84-1831

distribution of state highway construction funds, 84-1817

Imported beer, 4-324

Income tax

amounts earned in partnership, 84-4911

change of status from that of nonresident to resident, effect, 84-4915

change of status from that of resident to nonresident, effect, 84-4915

computation of amount, 84-4914

credits for income taxes imposed by foreign states, 84-4937

definitions, 84-4901

dependency exemptions, 84-4910

nonresident

ad valorem taxpayers, list, 84-4903.11

amounts withheld as lien against agent, 84-4903.9

amounts withheld considered funds held in trust, 84-4903.9

annual payment of withheld amount, when authorized, 84-4903.5

application to, 84-4903



## INDEX

References are to Title and Section numbers

### TAXATION (Continued)

#### Income tax (Continued)

##### nonresident (Continued)

- county assessor, duties regarding, 84-4903.11
- exceptions from withholding requirements, 84-4903.3
- failure of agent to withhold or pay over to state, penalty, 84-4903.7
- loans made to nonresidents for grain on which chattel mortgage filed, list, preparation, 84-4903.12
- modification of withholding provisions, 84-4903.6
- quarterly payment by withholding agent, 84-4903.5
- requiring withholding agent to make return and pay tax, power of board, 84-4903.8
- rights of nonresident, 84-4903.10
- rules and regulations, power of state board of equalization, 84-4903.13
- transmittal of amount of withholding to state board of equalization, 84-4903.2
- withholding agent, 84-4903.4
- withholding from payments to, 84-4903.2
- withholding of amount of tax, authorized, 84-4903.1
- partnership income, 84-4911
- personal exemptions, 84-4910
- persons moving out of state, 84-4915
- persons who must file return and pay tax, 84-4914
- rate of tax, 84-4902
- returns, 84-4914
- status changed from that of resident to nonresident, effect, 84-4915
- time for payment, 84-4914

#### Inheritance tax—See INHERITANCE TAX

##### Levy of taxes

- adult education, tax levy for, 75-1633
- county tax levy, 16-1015
- county tax levy for construction, maintenance and repair of public ferries, 32-1518
- fire districts in unincorporated areas, levy for, 11-2008
- special tax levy for high school purposes, 75-4609

##### Metalliferous mines

- amount of tax, 84-2004
- computation of tax, 84-2006
- delinquent taxes, penalty, 84-2007
- notice of tax, 84-2006

##### Motor vehicles and motor fuels, taxing extends only to vehicles operated on public roads, 32-2124.2

- operation across public roads and highways not considered operation on roads, when, 32-2124.1

##### Net proceeds tax

- assessment roll, 84-5408
- computation, 84-5403
- valuation of net proceeds, transmission to county assessor, 84-5408

##### Oil producers

- computation of tax, 84-2202
- rate of tax, 84-2202

##### Premium tax on fire insurance, 82-1231

##### Royalty interests, 84-5409

##### Sales tax on new passenger vehicles, 53-617

##### Special fuel dealers and special fuel users, definitions, 84-1831

##### State board of equalization

- change in assessed valuation of classes of property, notice and hearing, 84-710
- change in assessment of property assessed to any particular person, notice of intention, 84-710
- computation of net proceeds, 84-5403
- rules and regulations regarding collection of taxes from nonresidents, power to adopt, 84-4903.13
- transmission of net proceeds assessments to county assessor, 84-5408

### TELEVISION

#### Definitions, 70-402

#### Legislative purpose, 70-401

## INDEX

References are to Title and Section numbers

### TELEVISION (Continued)

- License for operation of VHF booster or VHF translator system
  - application, 70-404
  - contents of application, 70-404
  - fee for license, 70-405
  - issuance, 70-405
  - requirement, 70-403
- Rules and regulations, 70-406
- Violations of act, penalty, 70-407

### TORTS

- Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

### TRIALS

- Summoning of jurors, 93-1509

### TRUSTS AND TRUSTEES

- Devise or bequest in will to trustee of inter vivos trust established by testator
  - effect of entire revocation of trust prior to death, 91-321
  - property not deemed held under testamentary trust, 91-321
  - validity, 91-321
- Pension trusts, statutory or common law rules relating to restraint against alienation, suspension of power of alienation, accumulation of income, perpetuities or remoteness of vesting, not applicable to, 67-423
- Principal and income act—See PRINCIPAL AND INCOME ACT
- Transfer of stock by fiduciary, corporation or transfer agent not bound to determine whether fiduciary breaching obligation, 86-705
  - “fiduciary” defined, 86-706
- Validity, 67-424

### TUBERCULOSIS

- Act not to require medical or surgical treatment without consent, 69-311
- Admission of patients to sanitarium, 80-210.1
- Application to remove to facility persons who are menace to public health, 69-307
  - procedure where person refuses to enter or stay in hospital, 69-308
- Application to require person to submit to procedures for diagnosis, 69-307
  - procedure where person refuses to submit to procedures, 69-308
- Costs and expenses of act, 69-316
- Definitions, 69-305
- Effect of act on existing laws, 69-319
- Expenses of removal to facility, 69-317
- “Facility” defined, 69-305
- Hearings upon applications, 69-309
  - commitment, 69-310
    - copies of orders of, 69-311
  - order of court after hearing, 69-310
  - requiring examination, 69-310
- Legislative policy concerning, 69-304
- Maintenance, care and treatment of patient while in facility, charge for, 69-317
- Order of commitment, certified copies, 69-311
- Quarters and facilities at hospital, 69-318
- Release from facility
  - application, 69-313
  - finding that person no longer public health menace, discharge, 69-314
  - order for, 69-313
  - time for hearing, 69-313
- State board of health
  - duties concerning control, 69-301
  - rules and regulations, power to adopt, 69-306
- State tuberculosis sanitarium, admission of patients, 80-210.1
- Summons concerning hearings, 69-309
- Transfer of person to another hospital, 69-315
- Transporting person committed, 69-312
- “Tuberculosis” defined, 69-305

## INDEX

References are to Title and Section numbers

### U

#### UNEMPLOYMENT COMPENSATION

Definitions used in act, 87-148

#### UNEMPLOYMENT COMPENSATION COMMISSION BUILDING

See STATE CAPITOL, Unemployment compensation commission building

#### UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACT

See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

#### UNIFORM PRINCIPAL AND INCOME ACT

Text, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

#### URBAN RENEWAL LAW

See CITIES AND TOWNS, Urban renewal law

### W

#### WATER POLLUTION ACT

Definitions, 69-1328

#### WATERS AND WATER RIGHTS

Drainage districts—See DRAINAGE DISTRICTS

Irrigation districts—See IRRIGATION DISTRICTS

#### WEIGHTS AND MEASURES

Milk containers, regulations, 90-140

Weighing and measuring devices .

inspection by state sealer of weights and measures, 90-129

petroleum meters, gauges and measuring and testing devices, 90-129

tampering with seal on gasoline pumps, etc., penalty, 90-129

#### WESTERN INTERSTATE CORRECTIONS COMPACT

Adoption, 94-8019 to 94-8023—See SENTENCES, Western interstate corrections compact

#### WILD TURKEY

See FISH AND GAME

#### WILLS

Devise or bequest to trustee of inter vivos trust established by testator

effect of entire revocation of trust prior to death, 91-321

property not deemed held under testamentary trust, 91-321

validity, 91-321

#### WORKMEN'S COMPENSATION

Assessment of insurers, 92-1005

Compensation payable under workmen's compensation act as decreasing compensation payable under occupational disease act, 92-1333

Copy of testimony, exhibits, pleadings and records, furnishing to claimant without cost in event of action to review decision of board, 92-827

Industrial accident board

ex officio members not to receive additional compensation, 92-108

members, 92-104

occupational disease act, 92-1301 to 92-1368—See OCCUPATIONAL DISEASE ACT

salary of appointed member, 92-104

term of office of appointed member, 92-104

Insurance policies subject to provisions of act, 92-1005

Record of proceedings and hearings, 92-827

### Z

#### ZONING

See PLANNING AND ZONING















1231

1511







**DOES NOT  
CIRCULATE**

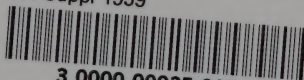
STATE LAW LIBRARY  
Justice Building  
215 N. Sanders  
Helena, Montana 59620

State Law Library Of Montana

KFM9030 1947 .A2

Revised codes of Montana, 1947, annotate

c.1 Suppl 1959



3 0000 00035 9970



